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THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963

With Introduction and Annotations

BY

IAN FIFE, Esq., M.C., T.D.

of the Inner Temple and the Oxford Circuit, Barrister-at-Law

AND

E. ANTHONY MACHIN, Esq., B.C.L., M.A.

of Lincoln's Inn and the South-Eastern Circuit, Barrister-at-Law

BEING A REPRINT OF
BUTTERWORTHS ANNOTATED LEGISLATION SERVICE
STATUTES SUPPLEMENT No. 138

LONDON
BUTTERWORTHS

1963

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PREFACE

The Offices, Shops and Railway Premises Act 1963 received the Royal Assent on the 31st July 1963, and, if Ministerial prognostications are correct, is likely to come into operation in "about a year" from that date, by which time it is anticipated that the Minister of Labour will be ready to put into effect many of the regulations which the Act gives him power to make.

Although to publish a book on the Act without the regulations may be like producing "Hamlet" without the Prince of Denmark, one reason for doing so is the veiled warning given by the Minister's Parliamentary Secretary (Mr. William Whitelaw) at the conclusion of the Second Reading debate in the House of Commons—"In the meantime, I hope that owners and occupiers generally will use the time [the year already referred to] to bring their premises into compliance with the Act as soon as its details have been decided" (667 H. of C. Official Report 683). The fact that the Act is closely modelled upon, and in many instances follows the wording of, the Factories Act 1961 has enabled us to state the meaning and effect of many of its provisions with a measure of confidence, and we hope, therefore, that early publication will assist not only those who have to comply with the Act but also those whose task it will be to enforce it. We have stated the law as we believe it to be on 1st October 1963.

We are grateful to the publishers' staff for the considerable assistance they have given us.

1, Paper Buildings,
Temple,
London, E.C.4.
October 1963.

I. F.
E. A. M.

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INTRODUCTION

With the passing of this Act statutory control of the conditions of work, which began with the early nineteenth century regulation of the textile industry, receives a wide extension estimated to cover the employment of eight million people in the non-industrial field. It follows—after some fourteen years—the recommendations of the Gowers Committee (which reported in March 1949 (Cmd. 7664)) with regard to shops and offices, but the recommendations concerning the railway industry are given but limited effect and those concerning theatres still await legislation. The present Act supersedes the Offices Act 1960, introduced by Mr. Richard Marsh, M.P., as a Private Member's Bill, which enabled the Secretary of State to make regulations for securing the health, safety and welfare of persons employed in offices, but since no regulations were made under that Act its repeal has solely formal effect. The present Act follows the general pattern of the Factories Act 1961, in that it contains both a number of important substantive provisions and extensive powers to make regulations governing matters of detail, and the wording of the Factories Act has been deliberately adhered to where it is relevant to the scope of this Act—not, perhaps, with altogether satisfactory results. This Act, like the Factories Act, although enforceable by criminal process, will, no doubt, give rise to a civil action for breach of statutory duty where the breach is of a provision designed to promote safety (see *Groves v. Wimborne (Lord)*, [1898] 2 Q.B. 402; [1898] All E.R. Rep. 147; *Brittanic Merthyr Coal Co., Ltd. v. David*, [1910] A.C. 74 and *Black v. Fife Coal Co., Ltd.*, [1912] A.C. 149), but as to whether a civil action will lie for breach of those provisions which appear to be designed to promote health or welfare, see the note "General effect of section" to s. 4, *post*. The existence of a statutory duty does not necessarily relieve an employer of his common law duty of care (see *Franklin v. Gramophone Co., Ltd.*, [1948] 1 All E.R. 353; [1948] 1 K.B. 542, C.A.) although compliance with the statutory duty may render it difficult, if not impossible, to establish negligence (*per* Somervell, L.J., at pp. 360 and 558, respectively). The existence of a statutory duty may, however, show that a particular risk ought to have been foreseen and so be relied upon to establish negligence (*per* Somervell, L.J., at pp. 360 and 558, respectively; *N.C.B. v. England*, [1954] 1 All E.R. 546, H.L.); but where the facts of the case are outside a statutory provision it is irrelevant to the question of negligence that they may be nearly within it (*Chipchase v. British Titan Products Co., Ltd.*, [1956] 1 All E.R. 613, C.A.).

The Act, which is to come into operation on a day or days appointed by the Minister of Labour, extends, with modifications, to Scotland but not to Northern Ireland and is binding upon the Crown to the limited extent provided by s. 83. The premises to which the Act applies are offices, shops and railway premises as defined in s. 1 with the exceptions set out in ss. 2 and 3.

By ss. 4–8 provision is made with regard to the cleanliness, overcrowding, temperature, ventilation and lighting of premises within the Act, and ss. 9–15 require the provision of sanitary conveniences, washing facilities, drinking water, accommodation for clothing, and facilities for sitting and for eating. S. 16 lays down safety requirements for floors, stairs, steps, passages and gangways and s. 17 requires the fencing of dangerous machinery. The cleaning of machinery by young persons is regulated by s. 18 and s. 19 prohibits the working of dangerous machines by untrained persons. The Minister of Labour is empowered by s. 20 to make special regulations for securing safety and health and under s. 21 he may make special regulations to protect persons against noise or vibrations which may affect their health. Under s. 22 a magistrates' court is given power to adjudicate upon

a complaint made by an enforcing authority and to prohibit the use of any premises, machinery or process which it is satisfied cannot be used without risk of injury. S. 23 prohibits the lifting of heavy weights and empowers the Minister to make regulations with regard thereto. Ss. 24–26 impose requirements as to the first-aid equipment to be provided on the premises. By s. 27 it is made an offence for any person to do anything likely to endanger the health or safety of persons employed on premises within the Act or to misuse or interfere with anything provided pursuant to the Act or regulations. Stringent fire precautions are laid down in ss. 28–38, including the provision of fire escapes, fire alarms and fire-fighting equipment, the inspection and certification of premises by the appropriate authority, and the making of orders by a magistrates' court prohibiting work in premises where the conditions with regard to means of escape in case of fire are dangerous. The Minister of Labour is empowered to make regulations with regard to means of escape (s. 35) and with regard to the steps to be taken to ensure that persons employed are familiar with the means of escape (s. 36) and may make special regulations prescribing means for fighting fire. The appropriate authority for the enforcement of ss. 28–38 is, by s. 39, the local fire authority with certain exceptions where the enforcing authority for other parts of the Act is either a factory or a mines and quarries inspector. S. 40 excludes open-air fuel storage premises from the requirements of ss. 28–38 and s. 41 requires consultation between the appropriate authority for fire purposes and the local authority for building purposes before alterations are required to be made to premises.

Special provisions for the enforcement of the Act and regulations in buildings in single or multiple ownership and the cleanliness, lighting and safety of the common parts of such buildings are contained in ss. 42 and 43, and s. 44 makes the owner of land on which there are two or more contiguous fuel storage premises responsible for certain contraventions of ss. 9 and 10 instead of the occupier.

The Minister of Labour is given power, by s. 45, to grant general exemptions from ss. 5 (2), 6, 9 and 10 after consultation with organisations representing both employers and employees, and, by s. 46, the enforcing authority may grant particular exemptions from ss. 5 (2), 6, 9 and 10 (1) upon the application of the person who would be liable for a contravention of those sections. Such a person may appeal to a magistrates' court from the refusal or withdrawal of an exemption.

It is an offence for the owner or occupier to levy any charge upon the persons employed in respect of anything done or provided pursuant to the Act or regulations (s. 47).

Any accident causing loss of life or disablement for more than 3 days must, by s. 48, be reported in the form to be prescribed and, by s. 49, before a person first begins to employ other persons on premises within the Act he must serve a notice in the form to be prescribed on the appropriate authority.

By s. 50 the Minister is empowered to make regulations prescribing the steps to be taken to inform persons employed of the effect of the Act and regulations.

Where shop premises are aggregated in a covered market place the Minister may, by special regulations, modify the application of the Act (s. 51).

S. 52 provides that local authorities are to enforce the Act and regulations, appointing inspectors for the purpose, except that the fire authority under the Fire Services Act 1947 is to enforce ss. 28–38 and appoint inspectors for that purpose, and except that, with respect to the local or fire authorities' own and certain other premises, the Act and regulations, or certain parts thereof, are to be enforced by factory inspectors. With regard to offices and shops forming part of a place of public entertainment in the County of London, the London County Council is to enforce the Act and

regulations, and with regard to offices and shops forming part of a mine or quarry certain parts of the Act and regulations are to be enforced by mine and quarry inspectors.

Inspectors appointed to enforce the Act are, by ss. 53 and 54, given powers of entry, examination and inquiry; they must, if required, produce evidence of their authority (s. 55), and an officer of a fire brigade is given the same powers as a factory or mines and quarries inspector when making inspections for the purpose of reporting on fire matters to such an inspector (s. 56).

For securing uniformity in the discharge by local authorities of their duties under the Act, the Minister of Labour may, by s. 57, make regulations and appoint officers who may be given authority to examine records and make any necessary enquiries.

S. 58 absolves a local authority's inspector from personal liability for any act done in the honest belief that his duty required or entitled him to do it, and enables the local authority in certain circumstances to indemnify him against the consequences of an action brought against him, but, by s. 59, a person entering premises in the exercise of powers under the Act who improperly discloses any information so obtained commits an offence.

Local and fire authorities are required by s. 60 to make annual reports to the Minister, copies of which are to be open to public inspection.

Ss. 61 and 62 make provision for the transfer to the Minister of the powers and duties of local authorities which fail to discharge their functions under the Act.

Offences and penalties are laid down in ss. 63 and 64 and, by s. 65, a director or other officer of a body corporate may also be deemed guilty of an offence committed by the body corporate.

Where a person is liable for a contravention and the contravention was due to the act or default of another person that other person may be charged with, and convicted of, the contravention (s. 66), and it is a defence for a person charged with a contravention to prove that he used all due diligence to secure compliance with the relevant provision (s. 67).

By s. 68, it is an offence to forge a fire or exemption certificate or to make false statements or use false documents to procure such a certificate or to make false entries in any register or other document required by the Act, or to pretend to be an inspector; and, by s. 69, it is made an offence to remove or deface a notice or other document which is posted or displayed pursuant to the Act or regulations.

Offences under the Act are to be tried summarily and a factory inspector authorised by the Minister may prosecute or conduct proceedings although not of counsel or a solicitor (s. 70), and local and fire authorities' inspectors are given certain powers with respect to proceedings in Scotland (s. 71).

By s. 72, appeal from a magistrates' court lies to Quarter Sessions.

Where a person is prevented by the terms of a lease or agreement from carrying out alterations necessary to comply with the Act or regulations he may, by s. 73, apply to the county court which may set aside or modify the relevant terms. Under the same section a county court may, on the application of a person carrying out such alterations, apportion the expense among persons with an interest in the premises.

Ss. 74-78 amend the Factories Act 1961 and other Acts in certain particulars.

The Minister of Labour is required to lay an annual report before Parliament (s. 79).

By s. 80 the power to make orders and regulations is exercisable by statutory instrument but the special provisions of the First Schedule to the Act apply to the making of special regulations.

The mode of service of notices and documents under the Act is laid down in s. 81.

Expenses and receipts are dealt with by s. 82.

Detailed provisions for the application of the Act to the Crown are contained in s. 83, and s. 84 excludes its application to visiting forces.

S. 85 provides that, with the exception of s. 25 (2), nothing in the Act is to apply to premises forming part of a factory; with the exception of s. 75 (3) nothing in the Act is to apply to premises used for the sale of fish by wholesale which constitute premises to which s. 125 (1) of the Factories Act 1961 applies; and nothing in the Act is to apply to any part of a mine below ground.

It is a defence in any legal proceedings, civil or criminal, based on a contravention of the Act or regulations to prove that the premises were occupied for a purpose which was accomplished within a period of six months if the premises consist of a moveable structure or six weeks if not (s. 86).

S. 87 enables the Parliament of Northern Ireland to make provisions similar to ss. 83 and 84 of this Act in any similar enactment, notwithstanding the limitations on its powers imposed by the Government of Ireland Act 1920.

The Act applies to the Isles of Scilly as if they were a County Borough (s. 88) and certain provisions are made with regard to the Inner and Middle Temples (s. 89).

The interpretation section is s. 90, and s. 91 provides, *inter alia*, that the Act is to come into operation on such day as the Minister may by Order appoint and that different days may be appointed for different provisions.

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963

(1963 c. 41)

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THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963

SECTION 1

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An Act to make fresh provision for securing the health, safety and welfare of persons employed to work in office or shop premises and provision for securing the health, safety and welfare of persons employed to work in certain railway premises; to amend certain provisions of the Factories Act 1961; and for purposes connected with the matters aforesaid

[31st July 1963]

Scope of Act

1. Premises to which this Act applies.—(1) The premises to which this Act applies are office premises, shop premises and railway premises, being (in each case) premises in the case of which persons are employed to work therein.

(2) In this Act—

(a) “office premises” means a building or part of a building, being a building or part the sole or principal use of which is as an office or for office purposes;

- (b) "office purposes" includes the purposes of administration, clerical work, handling money and telephone and telegraph operating; and
- (c) "clerical work" includes writing, book-keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication;

and for the purposes of this Act premises occupied together with office premises for the purposes of the activities there carried on shall be treated as forming part of the office premises.

(3) In this Act—

(a) "shop premises" means—

- (i) a shop;
 - (ii) a building or part of a building, being a building or part which is not a shop but of which the sole or principal use is the carrying on there of retail trade or business;
 - (iii) a building occupied by a wholesale dealer or merchant where goods are kept for sale wholesale or a part of a building so occupied where goods are so kept, but not including a warehouse belonging to the owners, trustees or conservators of a dock, wharf or quay;
 - (iv) a building to which members of the public are invited to resort for the purpose of delivering there goods for repair or other treatment or of themselves there carrying out repairs to, or other treatment of, goods, or a part of a building to which members of the public are invited to resort for that purpose;
 - (v) any premises (in this Act referred to as "fuel storage premises") occupied for the purpose of a trade or business which consists of, or includes, the sale of solid fuel, being premises used for the storage of such fuel intended to be sold in the course of that trade or business, but not including dock storage premises or colliery storage premises;
- (b) "retail trade or business" includes the sale to members of the public of food or drink for immediate consumption, retail sales by auction and the business of lending books or periodicals for the purpose of gain;
 - (c) "solid fuel" means coal, coke and any solid fuel derived from coal or of which coal or coke is a constituent;
 - (d) "dock storage premises" means fuel storage premises which constitute or are comprised in premises to which certain provisions of the Factories Act 1961 apply by virtue of section 125 (1) (docks, etc.) of that Act; and
 - (e) "colliery storage premises" means fuel storage premises which form part of premises which, for the purposes of the Mines and Quarries Act 1954, form part of a mine or quarry, other than premises where persons are regularly employed to work by a person other than the owner (as defined by that Act) of the mine or quarry;

and for the purposes of this Act premises occupied together with a shop or with a building or part of a building falling within sub-paragraph (ii), (iii) or (iv) of paragraph (a) above for the purposes of the trade or business carried on in the shop or, as the case may be, the building or part of a building, shall be treated as forming part of the shop or, as the case may be, of the building or part of the building, and premises occupied together with fuel storage premises for the purposes of the activities there carried on (not being office premises) shall be treated as forming part of the fuel storage premises, but for the purposes of this Act office premises comprised in fuel storage premises shall be deemed not to form part of the last-mentioned premises.

(4) In this Act "railway premises" means a building occupied by railway undertakers for the purposes of the railway undertaking carried on by them and situate in the immediate vicinity of the permanent way or a part (so occupied) of a building so situate, but does not include—

- (a) office or shop premises;
- (b) premises used for the provision of living accommodation for persons employed in the undertaking, or hotels; or
- (c) premises wherein are carried on such processes or operations as are mentioned in section 123 (1) (electrical stations) of the Factories Act 1961 and for such supply as is therein mentioned.

(5) For the purposes of this Act premises maintained in conjunction with office, shop or railway premises for the purpose of the sale or supply for immediate consumption of food or drink wholly or mainly to persons employed to work in the premises in conjunction with which they are maintained shall, if they neither form part of those premises nor are required by the foregoing provisions of this section to be treated as forming part of them, be treated for the purposes of this Act as premises of the class within which fall the premises in conjunction with which they are maintained.

NOTES

General effect of section. Sub-s. (1) specifies the premises to which the Act applies as office premises, shop premises and railway premises. Sub-ss. (2) to (4) define, respectively, "office premises", "shop premises" and "railway premises". Sub-s. (5) deals with the special case of canteen premises.

Sections 2 and 3, *post*, exclude from the application of the Act premises in which only employer's relatives or outworkers work, and premises where only 21 man-hours weekly are normally worked.

Special provisions apply with respect to buildings of which part only fall within the definition in s. 1 (see s. 42, *post*), with respect to buildings plurally owned (see s. 43, *post*) and with respect to contiguous fuel storage premises in single ownership (see s. 44, *post*).

With the exception of s. 25 (2) (which relates to the making of regulations with regard to first-aid requirements) nothing in the Act applies to factory premises within the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 239) (see s. 85 (1), *post*).

With the exception of s. 75(3) (which places a limitation upon the application of the Factories Act 1961 to warehouses) nothing in the Act applies to certain premises used for the sale of fish by wholesale (see s. 85 (2), *post*).

Nothing in the Act applies to underground parts of mines within the Mines and Quarries Act 1954 (101 Statutes Supp. 27) (see s. 85 (3), *post*).

Special provisions apply to premises used for transitory purposes (see s. 86, *post*).

Sub-s. (1): Persons. Since, by virtue of the Interpretation Act 1889, s. 1 (1) (b) (24 Halsbury's Statutes (2nd Edn.) 206), the plural includes the singular, premises are not outside the Act merely because only one person is employed to work therein (see *Griffith v. Ferrier*, 1952 S.C. (J.) 56, so interpreting the similar words of s. 151 of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 996)).

Sub-s. (2): Office premises. It is to be noted that the use of part only of a building for office purposes is sufficient to bring that part within the Act, although the building as a whole may be outside the Act. Thus, a hospital or school is not, as such, within the Act, but offices forming part of the hospital or school will themselves be subject to it.

Sub-s. (3): Shop. This term is not defined in the Act (compare s. 74 (1) of the Shops Act 1950 (67 Statutes Supp. 59), which defines "shop" for the purposes of that Act as including "any premises where any retail trade or business is carried on"; by s. 74 (1) of that Act, "retail trade or business" includes "the business of a barber or hairdresser, the sale of refreshments or intoxicating liquors, the business of lending books or periodicals when carried on for purposes of gain, and retail sales by auction, but does not include the sale of programmes and catalogues and other similar sales at theatres and places of amusement"). The definition in the Shops Act 1950 cannot be applied in construing the word "shop" for the purposes of the present Act, and any attempt to make use of it for that purpose would be dangerously misleading. In view of the extended definition of "shop premises" contained in s. 1 (3) (a) of the present Act the difficulties which have arisen in interpreting the statutory definition of "shop" contained in s. 74 (1) of the Shops Act 1950, seem unlikely to arise.

Since a "shop" is a species of the genus "shop premises" for the purpose of s. 1 (3) (a), it seems clear that nothing can be a "shop" unless it is also "premises". Thus, it would seem that a mobile shop is not a "shop" within the Act (compare the similar

interpretation accorded to s. 74 (1) of the Shops Act 1950 in *Stone v. Boreham*, [1958] 2 All E.R. 715, D.C., and see, also, *Kahn v. Newberry*, [1959] 2 All E.R. 202, D.C.).

In deciding what is a "shop" for the purposes of the Act, it is submitted that once it is clear that there are "premises" the sole remaining question is whether what is being considered is a "shop" in the ordinary and natural sense of the word. "Where words are . . . perfectly familiar, all one can do is to say whether or not one regards them as apt to cover or describe the circumstances in question in any particular case" (*per* Somervell, L.J., in *Bath v. British Transport Commission*, [1954] 2 All E.R. 542, at p. 543). It is probably true to say that the carrying on of a retail trade is the hallmark of a "shop" (see *per* Tindal, C.J., in *R. v. Chapman & Alderman* (1843), 7 J.P. 132).

Retail trade or business. "Carrying on" involves a degree of permanency (see *Golder v. Thomas Johnston's (Bakers) Ltd.*, 1950 S.L.T. (Sh. Ct.) 50, decided upon the Tenancy of Shops (Scotland) Act 1949). The definition of "retail trade or business" in s. 1 (3) (b) is plainly not intended to be exhaustive (for a discussion of the meaning of the word "includes" in statutory definitions, see *Dilworth v. Commissioner of Stamps*, [1899] A.C. 99, P.C.). It is less comprehensive than the corresponding definition in s. 74 (1) of the Shops Act 1950 (67 Statutes Supp. 59). A retailer is one who deals with customers, as opposed to a wholesaler, who deals only with persons who buy to sell again (*per* Bacon, V.C., in *Treacher & Co., Ltd. v. Treacher*, [1874] W.N. 4); and see, further, *Staincross Revenue Officer v. Staincross Assessment Committee and Whitehead* (1930), 143 L.T. 525 at p. 567 and *Phillips v. Parnaby*, [1934] 2 K.B. 299. The interpretation of the words, "retail trade or business", in s. 74 (1) of the Shops Act 1950 (67 Statutes Supp. 59), has raised the problem whether they are apt to cover the provision of services as well as the supply of goods. In *M. & F. Frawley, Ltd. v. Ve-Ri-Best Manufacturing Co., Ltd.*, [1953] 1 All E.R. 50, C.A., Somervell, L.J., took the view that the word "retail" primarily suggested the selling of goods rather than the selling of services, and whilst both he and Jenkins, L.J., thought that the terms of the definition suggested that a business might be a retail business although it was concerned with matters other than the sale of goods, they also took the view that to satisfy the definition where there was a sale of services the services rendered must be performed in circumstances comparable with those in which a sale of goods is carried on in a retail shop. The Court of Appeal therefore held that the business in issue, which was that of a builder and decorator, fell outside the definition. It will be noted that the expression, "retail trade or business", in s. 74 (1) of the Shops Act 1950, is used in order to define the word "shop" therein, so that the interpretation of that expression is necessarily coloured by its being linked with the word "shop" (see *M. & F. Frawley, Ltd. v. Ve-Ri-Best Manufacturing Co., Ltd.*, *supra*, at p. 52). In s. 1 (3) (a) (ii) of the present Act the expression, "retail trade or business", is expressly used in connection with buildings which are not shops, so that there is room for interpreting that expression in a wider sense than it is capable of bearing in the context of the Shops Act 1950 (67 Statutes Supp. 1).

Warehouse. Such warehouses as are here excepted fall within the provisions of s. 125 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 361 and Redgrave's Factories Acts (20th Edn.) pp. 320 *et seq.*), provided that mechanical power is used in or for the purposes of the warehouse; and by s. 125 thereof certain provisions of the Factories Act 1961, are applied thereto. A transit shed may be a "warehouse" (*Fisher v. Port of London Authority*, [1962] 1 All E.R. 458).

Gain. The ordinary meaning of "gain" is acquisition. "Gain is something obtained or acquired. It is not limited to pecuniary gain . . . and still less is it limited to commercial profits . . ." (*per* Jessel, M.R., in *Ex parte Hargrove & Co.* (1875), 10 Ch. App. 542 at pp. 546, 547, *n.*, construing the words "not involving the acquisition of gain by the company" in s. 31 of the Companies Act 1862; see, further, on the construction of the word "gain" in this context, *Greenberg v. Cooperstein*, [1926] Ch. 657). The construction of the phrase, "for purposes of gain", in s. 151 (1) of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 1113) (now s. 175 (1) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 402)) was considered by the Court of Appeal in *Hendon Corp'n. v. Stanger*, [1948] 1 All E.R. 377, to include indirect as well as direct gain.

Premises to which . . . Factories Act 1961 apply. The premises referred to in s. 125 (1) are ". . . every dock, wharf or quay (including any warehouse belonging to the owners, trustees or conservators of the dock, wharf or quay, and any line or siding used in connection with and for the purposes of the dock, wharf or quay and not forming part of a railway or tramway) and every other warehouse (not forming part of a factory) in or for the purposes of which mechanical power is used. . ." For the provisions of this section and notes thereon see 41 Halsbury's Statutes (2nd Edn.) 361 and Redgrave's Factories Acts (20th Edn.) pp. 320 *et seq.*

Sub-s. (4): Railway premises. It is to be noted that by virtue of s. 85 (1), *post*, the Act does not, in general, apply to factory premises for the purposes of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 239). By s. 175 (2) of that Act (41 Halsbury's Statutes (2nd Edn.) 402), the expression "factory" includes the following premises in which persons are employed in manual labour:

"(f) except as provided in subsection (10) of this section, any premises in which the construction, reconstruction or repair of locomotives, vehicles or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking".

By s. 175 (10) of that Act:

"Premises used for the purpose of housing locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out shall not be deemed to be a factory by reason only of paragraph (f) of subsection (2) of this section, unless they are premises used for the purposes of a railway undertaking where running repairs to locomotives are carried out".

The effect of s. 175 (2) (f), (10) of the Factories Act 1961 is that railway running sheds where running repairs to locomotives are carried out are subject to the provisions of that Act and (by virtue of the Railway Running Sheds Order 1961 (S.I. 1961 No. 1250) and the Railway Running Sheds (No. 1) Regulations 1961 (S.I. 1961 No. 1251) many of the orders and regulations made under the Factories Acts are extended so as to apply to such running sheds. It follows that such running sheds are excepted from the definition of "railway premises" contained in the present Act.

Factories Act 1961. The processes, operations and supply mentioned in s. 123 (1) of that Act are "the processes or operations of generating, transforming or converting, or of switching, controlling or otherwise regulating, electrical energy for supply by way of trade, or for supply for the purposes of any transport undertaking or other industrial or commercial undertaking or of any public building or public institution, or for supply to streets or other public places. . .". For the provisions of this section and notes thereon, see 41 Halsbury's Statutes (2nd Edn.) 359 and Redgrave's Factories Acts (20th Edn.) pp. 315 *et seq.*

Definitions. For "building" (except in sub-s. (4)) and "railway undertakers", see s. 90 (1), *post*; for "employed", see s. 90 (1), (4), *post*. See also as to "... work in the premises", s. 90 (3), *post*; and note as to "clerical work" and "office purposes", sub-s. (2) of this section, as to "colliery storage premises", "dock storage premises", "retail trade or business" and "solid fuel", sub-s. (3), as to "fuel storage premises" and "shop premises", sub-ss. (3), (5), as to "office premises", sub-ss. (1), (3) and as to "railway premises", sub-ss. (4), (5).

Factories Act 1961. See 41 Halsbury's Statutes (2nd Edn.) 239. For ss. 123 (1) and 125 (1) of that Act, see 41 Halsbury's Statutes (2nd Edn.) 359, 361. Those sections are modified by ss. 74 and 75, *post*, respectively.

Mines and Quarries Act 1954. For the meanings of "mine" and "quarry" in that Act and the premises which for the purposes of that Act form part of a mine or quarry, see s. 180 of that Act (101 Statutes Supp. 194); for the meaning of "owner" in that Act, see s. 181 thereof.

2. Exception for premises in which only employer's relatives or outworkers work.—(1) This Act shall not apply to any premises to which it would, apart from this subsection, apply, if none of the persons employed to work in the premises is other than the husband, wife, parent, grandparent, son, daughter, grandchild, brother or sister of the person by whom they are so employed.

(2) A dwelling shall not, for the purposes of this Act, be taken to constitute or comprise premises to which this Act applies by reason only that a person dwelling there who is employed by a person who does not so dwell does there the work that he is employed to do in compliance with a term of his contract of service that he shall do it there.

NOTES

General effect of section. This section excepts from the operation of the Act premises in which are employed only employer's relatives of specified classes, or outworkers.

Definitions. For "employed", see s. 90 (1), *post*. See also as to "... work in the premises", s. 90 (3), *post*.

3. Exception for premises where only 21 man-hours weekly normally worked.—(1) This Act shall not apply to any premises to which it would, apart from this subsection, apply, if the period of time worked there during each week does not normally exceed twenty-one hours.

(2) For the purposes of this section the period of time worked in any premises shall be deemed to be—

- (a) as regards a week in which one person only is employed to work in the premises, the period of time worked by him there;
- (b) as regards a week in which two persons or more are so employed, the sum of the periods of time for which respectively those persons work there.
- (3) The Minister may by regulations direct that, in relation to premises generally, or any class of premises, subsection (1) of this section shall have effect with the substitution, for the reference to twenty-one hours, of a reference to such lesser number of hours as may be specified in the regulations.

NOTES

General effect of section. This section excepts from the operation of the Act premises in which only 21 man-hours weekly are normally worked. By sub-s. (3) the Minister has power by making regulations to substitute a lesser number of hours than 21.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister" and "week", see s. 90 (1), *post*. See also as to "... work in the premises", s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

Health, Safety and Welfare of Employees (General Provisions)

4. Cleanliness.—(1) All premises to which this Act applies, and all furniture, furnishings and fittings in such premises shall be kept in a clean state.

(2) No dirt or refuse shall be allowed to accumulate in any part of premises to which this Act applies in which work, or through which pass, any of the persons employed to work in the premises; and the floors of, and any steps comprised in, any such part as aforesaid shall be cleaned not less than once a week by washing or, if it is effective and suitable, by sweeping or other method.

(3) The Minister may by regulations made as respects premises to which this Act applies, or any class of such premises, require that, in addition to the taking of the steps whose taking is requisite to secure compliance with the last foregoing subsection, there shall be taken, for the purpose of securing the cleanliness of premises to which the regulations apply and of the furniture, furnishings and fittings therein, such steps as may be prescribed by the regulations.

(4) Neither subsection (2) of this section nor anything in regulations under the last foregoing subsection shall be construed as being in derogation of the general obligation imposed by subsection (1) of this section.

(5) Nothing in this section or in regulations thereunder shall apply to fuel storage premises which are wholly in the open, and, in the case of such premises which are partly in the open, so much of them as is in the open shall, for the purposes of this section and of such regulations, be treated as not forming part of the premises.

NOTES

General effect of section. Sub-s. (1) imposes a general duty to keep in a clean state premises within the Act, and their furniture, furnishings and fittings. Sub-s. (2) prohibits the accumulation of dirt and refuse and requires the regular cleaning of floors and steps. By sub-s. (3) the Minister has power to make regulations which prescribe the taking of additional steps to secure the cleanliness of premises; and sub-s. (5) excepts open fuel storage premises from the section and regulations made thereunder.

This section may be compared with the provisions as to cleanliness in factories contained in s. 1 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 239 and Redgrave's Factories Acts (20th Edn.) at pp. 10 *et seq.*)

Although the matter is not settled beyond doubt, the preponderance of authority is strongly in favour of allowing a civil right of action for breach of a health provision of the Factories Act 1961 and hence, by parity of reasoning, for breach of a cognate provision of the present Act (see *McCarthy v. Daily Mirror Newspapers, Ltd.*, [1949] 1 All E.R. 801, C.A.; *Nicholson v. Atlas Steel Foundry and Engineering Co., Ltd.*, [1957] 1 All E.R. 776, H.L.; *Clarkson v. Modern Foundries, Ltd.*, [1958] 1 All E.R. 33;

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963 13

SECTION 5

Murray v. Walnut Cabinet Works, Ltd., *The Times*, October 19th, 1954 and *Carroll v. North British Locomotive Co., Ltd.*, 1957 S.L.T. (Sh. Ct.) 2; and compare the reservation of Denning, L.J., in *Ebbs v. James Whitson & Co., Ltd.*, [1952] 2 All E.R. 192, C.A., at p. 195). *Carroll v. North British Locomotive Co., Ltd.*, *supra*, involved an action for breach (*inter alia*) of s. 1 (b) of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 996) (a provision requiring the regular cleaning of workroom floors) and Sheriff-Substitute Walker, after full consideration, held, on a preliminary plea-in-law, that there was a right to damages for that breach. It is therefore submitted that a breach of a provision of s. 4 of the present Act, or of regulations made thereunder, gives rise, in like manner, to an action for damages.

In comparing the provisions of the present Act with those of the Factories Act 1961, it must be borne in mind that whereas the latter Act is specifically divided into (*inter alia*) Part I Health (General Provisions), Part II Safety (General Provisions) and Part III Welfare (General Provisions), the corresponding provisions of the present Act are not so divided, but fall under the general rubric, Health, Safety and Welfare of Employees (General Provisions), which precedes s. 4. In the case of Part III of the Factories Act 1961, it has been held that some of the welfare provisions therein contained have a purely welfare outlook, which may or may not give rise to civil liability, whilst others impinge on matters of health and safety, a breach of which does give rise to civil liability (see *Reid v. Westfield Paper Co., Ltd.*, 1957 S.C. 218, First Division of the Court of Session). It is therefore submitted that a breach of a provision of the present Act which is cognate to a health provision of the Factories Act 1961, gives rise to civil liability, whereas a breach of a provision of the present Act which is cognate to a welfare provision of the latter Act may or may not, according to its tenor, give rise to civil liability. Provisions of the present Act which appear to be cognate to health provisions of the Factories Act 1961 are ss. 4 to 9, and those which appear to be cognate to welfare provisions of the latter Act are ss. 10 to 15.

The question, whether the health and welfare provisions of the Factories Act 1961 give rise to civil liability, is fully discussed in Redgrave's Factories Acts (20th Edn.) General Introduction, pp. lxxx *et seq.*

For provisions relating to the cleanliness of windows and skylights, see s. 8 (3), *post*; for those relating to the cleanliness of sanitary conveniences, see s. 9 (2), *post*; and for those relating to the cleanliness of washing places, see s. 10 (2), *post*.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Special provisions as to common parts. For special provisions as to the cleanliness of the common parts of buildings, part of which consists of premises to which this Act applies, see ss. 42 (1), (2), (5) and 43 (1), (2), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Statutory nuisances. For dirt, etc., as statutory nuisances, see the Public Health Act 1936, s. 92 (1) (130 Statutes Supp. 141), and the Public Health (London) Act 1936, s. 82 (1) (15 Halsbury's Statutes (2nd Edn.) 935). See also s. 92 (2) of the first-mentioned Act and s. 82 (2) of the last-mentioned Act.

As from 1st April 1965 the Public Health (London) Act 1936 is repealed by the London Government Act 1963, s. 93 (1), Sch. 18, Part II, and by s. 40 of that Act the Public Health Act 1936 is applied throughout the Greater London Area.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "fuel storage premises", see s. 1 (3) (a) (v), (5), *ante*; for "the Minister" and "week". see s. 90 (1), *post*. See also as to "... work in the premises", s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October, 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

5. Overcrowding.—(1) No room comprised in, or constituting, premises to which this Act applies shall, while work is going on therein, be so overcrowded as to cause risk of injury to the health of persons working therein; and in determining, for the purposes of this subsection, whether any such room is so overcrowded as aforesaid, regard shall be had (amongst other things) not only to the number of persons who may be expected to be working in the room at any time but also to the space in the room occupied by furniture, furnishings, fittings, machinery, plant, equipment, appliances and other things (whether similar to any of those aforesaid or not).

(2) The number of persons habitually employed at a time to work in such a room as aforesaid shall not be such that the quotient derived by dividing by that number the number which expresses in square feet the area of the surface of the floor of the room is less than forty or the quotient

derived by dividing by the first-mentioned number the number which expresses in cubic feet the capacity of the room is less than four hundred.

(3) Subsection (2) of this section—

- (a) shall not prejudice the general obligation imposed by subsection (1) thereof;
- (b) shall not apply to a room to which members of the public are invited to resort; and
- (c) shall not, in the case of a room comprised in, or constituting, premises of any class (being a room which at the passing of this Act is comprised in, or constitutes, premises to which this Act applies), have effect until the expiration of the period of three years beginning with the day on which the said subsection (1) comes into force as respects premises of that class.

NOTES

General effect of section. Sub-s. (1) imposes a general prohibition against overcrowding in premises within the Act, and sub-s. (2) prohibits overcrowding in numbers which exceed the product of a prescribed formula. Sub-s. (3) provides that sub-s. (2) shall not apply to public rooms, and that it shall not have effect until a future date.

This section may be compared with the provisions as to overcrowding in factories contained in s. 2 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 246 and Redgrave's Factories Acts (20th Edn.) pp. 15, 16).

As to liability in tort, see the note "General effect of section", to s. 4, *ante*.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Sub-s. (2). The Minister has power to exempt premises or rooms of any class from the provisions of this subsection (s. 45 (1), *post*), and the enforcing authority has power to exempt particular premises or rooms from those provisions (s. 46 (1), *post*).

Sub-s. (3): Passing of this Act. The Act was passed, *i.e.*, received the Royal Assent, on 31st July 1963.

Beginning. In calculating the period of three years the day from which it runs must be included; see *Hare v. Gocher*, [1962] 2 All E.R. 763; [1962] 2 Q.B. 641.

The day on which the said sub-s. (1) comes into force. The Act comes into operation on such day as the Minister may appoint, and different days may be appointed for different provisions (see s. 91 (2), *post*).

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Statutory nuisances. For overcrowding as a statutory nuisance, see the Public Health Act 1936, s. 92 (1) (130 Statutes Supp. 141), and the Public Health (London) Act 1936, s. 82 (1), (3) (15 Halsbury's Statutes (2nd Edn.) 935).

See also the second paragraph of the note to s. 4, *ante*.

Definitions. For "employed", see s. 90 (1), (4), *post*. See also as to "... work in such a room", etc., s. 90 (3), *post*.

6. Temperature.—(1) Effective provision shall be made for securing and maintaining a reasonable temperature in every room comprised in, or constituting, premises to which this Act applies, being a room in which persons are employed to work otherwise than for short periods, but no method shall be used which results in the escape into the air of any such room of any fume of such a character and to such extent as to be likely to be injurious or offensive to persons working therein.

(2) Where a substantial proportion of the work done in a room to which the foregoing subsection applies does not involve severe physical effort, a temperature of less than 16 degrees Centigrade (which is equivalent to 60.8 degrees Fahrenheit) shall not be deemed, after the first hour, to be a reasonable temperature while work is going on.

(3) The foregoing subsections shall not apply—

- (a) to a room which comprises, or is comprised in or constitutes, office premises, being a room to which members of the public are

invited to resort, and in which the maintenance of a reasonable temperature is not reasonably practicable; or

- (b) to a room which comprises, or is comprised in or constitutes, shop or railway premises, being a room in which the maintenance of a reasonable temperature is not reasonably practicable or would cause deterioration of goods;

but there shall be provided for persons who are employed to work in a room to which, but for the foregoing provisions of this subsection, subsection (1) of this section would apply, conveniently accessible and effective means of enabling them to warm themselves.

(4) In premises to which this Act applies there shall, on each floor on which there is a room to which subsection (1) of this section applies, be provided in a conspicuous place and in such a position as to be easily seen by the persons employed to work in the premises on that floor a thermometer of a kind suitable for enabling the temperature in any such room on that floor to be readily determined; and a thermometer provided in pursuance of this subsection shall be kept available for use by those persons for that purpose.

(5) The Minister may, by regulations for premises to which this Act applies, or for any class of such premises, prescribe a standard of reasonable temperature (which may vary the standard prescribed by subsection (2) of this section and to which conformity shall be obligatory and a sufficient compliance with subsection (1) of this section so far as it relates to temperature) and prohibit the use of any methods of maintaining a reasonable temperature which, in his opinion, are likely to be injurious to the persons employed, and direct that thermometers shall be provided and maintained in specified places and positions in addition to any required by subsection (4) of this section to be provided.

(6) It shall be the duty of the employer of persons for whom means of enabling them to warm themselves are provided in pursuance of subsection (3) of this section to afford them reasonable opportunities for using those means, and if he fails so to do he shall be guilty of an offence.

(7) In this section "fume" includes gas or vapour.

NOTES

General effect of section. Sub-s. (1) imposes a general duty to maintain a reasonable temperature in premises within the Act, and sub-s. (2) makes special provision in respect of rooms which are used for work not involving severe physical effort. By sub-s. (3) certain rooms are excepted from the operation of sub-ss. (1) and (2); sub-s. (4) requires the provision of thermometers; sub-s. (5) empowers the Minister to prescribe standards of reasonable temperature, to prohibit injurious methods of heating, and to direct the provision of additional thermometers; and sub-s. (6) imposes upon employers a duty to afford employees opportunities for using means of warming themselves. Sub-s. (7) defines "fume".

This section may be compared with the provisions as to temperature in factories contained in s. 3 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 247 and Redgrave's Factories Acts (20th Edn.) pp. 16 *et seq.*). Section 38 (1) (b) of the Shops Act 1950 (67 Statutes Supp. 34), imposed a duty to maintain a reasonable temperature in shops. This subsection is repealed by the present Act (s. 91 and Sch. 2, *post*).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*, and, in particular, *Murray v. Walnut Cabinet Works, Ltd.*, *The Times*, October 19th, 1954, in which Cassels, J., held (it appears) that a breach of the corresponding provision of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 996), gave rise to civil liability. On appeal, the Court of Appeal expressed no view on the matter (see 105 L. Jo. 41).

The Minister has power to exempt premises or rooms of any class from the provisions of this section (s. 45 (1), *post*), and the enforcing authority has power to exempt particular premises or rooms from those provisions (s. 46 (1), *post*).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Fume. This includes gas or vapour (sub-s. (7)).

Sub-s. (3): Reasonably practicable. In the present Act, as in the Factories Act 1961 and other protective legislation, an obligation is frequently qualified by

the phrase, "so far as reasonably practicable", or by the phrase, "so far as practicable". Each of these phrases affects in a different manner the obligation which it qualifies. "Reasonably practicable" is a narrower term than "physically possible", and implies that a computation must be made in which the *quantum* of risk is placed in one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them—the risk being insignificant in relation to the sacrifice—the defendants discharge the onus on them. Moreover, this computation falls to be made by the owner at a point of time anterior to the accident (see *per* Asquith, L.J., in *Edwards v. National Coal Board*, [1949] 1 All E.R. 743, C.A., at p. 747, a case upon the interpretation of s. 102 (8) of the Coal Mines Act 1911 (16 Halsbury's Statutes (2nd Edn.) 162)). This construction of "reasonably practicable" was followed in *McCarthy v. Coldair, Ltd.*, [1951] 2 T.L.R. 1226, C.A., and was approved in *Marshall v. Gotham Co., Ltd.*, [1954] 1 All E.R. 937, H.L., *per* Lord Reid at p. 942 and, *semble*, *per* Lord Oaksey at p. 939.

Where the statutory obligation is qualified solely by the word "practicable" a stricter standard is imposed. Measures may be "practicable" which are not "reasonably practicable" (*per* Lord Reid in *Marshall v. Gotham Co., Ltd.*, *supra*, at p. 942), but, nonetheless, "practicable" means something more than physically possible. The measures must be possible in the light of current knowledge and invention (see *per* Parker, J., in *Adsett v. K. & L. Steelfounders and Engineers, Ltd.*, [1953] 1 All E.R. 97, n., approved by the Court of Appeal at [1953] 2 All E.R. 320). See also *per* Parker, L.C.J., in *Moorecroft v. Thomas Powles & Sons, Ltd.*, [1962] 3 All E.R. 741, D.C. at p. 746. In *Jayne v. National Coal Board*, [1963] 2 All E.R. 220 (decided upon s. 157 of the Mines & Quarries Act 1954 (101 Statutes Supp. 176)), Veale, J., held that "impracticability" was a conception different from that of impossibility: "the latter is absolute, the former introduces at all events some degree of reason and involves at all events some regard for practice".

It is not clear upon whom lies the onus of proving that compliance with the statutory obligation was not "reasonably practicable", or was not "practicable", as the case may be. In *Marshall v. Gotham Co., Ltd.*, *supra* (a case upon the interpretation of the Metalliferous Mines General Regulations 1938), Lord Tucker (at p. 943) and Lord Keith (at p. 945) thought that the onus lay upon the defendants; but it is to be noted that in that case the words "reasonably practicable" qualified the Metalliferous Mines General Regulations 1938, generally, by reason of their presence in the enabling statute. It may not, therefore, be legitimate to deduce from *Marshall v. Gotham Co., Ltd.*, *supra*, that in a case where the qualifying words are embodied in the statutory provision itself the onus is similarly placed. In *Callaghan v. Kidd & Son (Engineers), Ltd.*, [1944] 1 All E.R. 525 (a Factories Act case), the Court of Appeal found it unnecessary to decide the point, but were disposed to the view (at p. 527) that since the difficulty or ease of doing what is necessary to maintain safety is so much more within the knowledge of the management than of their workpeople it was for the defence to establish that the qualification applied. This dictum was followed by Denning and Hodson, L.J.J., in *McCarthy v. Coldair, Ltd.*, [1951] 2 T.L.R. 1226, but its reasoning was not approved by Lord Tucker in *Marshall v. Gotham Co., Ltd.*, *supra*, at p. 943. In *Walter Wilson & Son, Ltd. v. Summerfield*, [1956] 3 All E.R. 550, D.C. (a criminal case decided upon reg. 9 of the Docks Regulations 1934), it was held that the onus lay upon the persons charged with the duty to prove that it was not reasonably practicable for them to provide a gangway, but Hallett, J., while concurring in the decision, considered (at p. 554) that the dicta of the Court of Appeal in *Callaghan's* case, *supra*, were not to be applied generally, and preferred merely to construe the regulations before him. In *Jayne v. National Coal Board*, [1963] 2 All E.R. 220 (a case upon s. 157 of the Mines and Quarries Act 1954 (101 Statutes Supp. 176)), which provides that it is a defence to prove that it is impracticable to avoid or prevent a contravention of safety provisions) Veale, J., apparently treated it as established that it was for the defendants to negative reasonable practicability under s. 102 (8) of the Coal Mines Act 1911 (16 Halsbury's Statutes (2nd Edn.) 162) and to negative practicability under its successor, s. 157 of the Mines and Quarries Act 1954.

In these circumstances all that can safely be said is that while no general rule can be laid down, so that the statutory provision in question must receive its own interpretation, there is a tendency to interpret such provisions so as to throw upon the defendant the burden of bringing himself within the excepting words.

Sub-s. (5): Opinion. The purpose of the reference to his opinion is clearly to make the Minister, acting in good faith, the sole judge of the matter in question; cf. *Allcroft v. London (Lord Bishop)*, [1891] A.C. 666 and *Re City of Plymouth (City Centre) Declaratory Order*, 1946, *Robinson v. Minister of Town and Country Planning*, [1947] 1 All E.R. 851; [1947] K.B. 702, C.A. See, however, in particular, *Ross-Clunis v. Papadopoulos*, [1958] 2 All E.R. 23, P.C., and *Customs and Excise Comrs. v. Cure and Deeley, Ltd.*, [1961] 3 All E.R. 641; [1962] 1 Q.B. 340; and note s. 80 (2), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*; and note sub-s. (6) of this section.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*.

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SECTION 8

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*; for "office premises", see s. 1 (2), (5), *ante*; for "railway premises", see s. 1 (4), (5), *ante*; for "shop premises", see s. 1 (3), (5), *ante*. See also as to "... work ...", s. 90 (3), *post*. "Fume" is defined in sub-s. (7) of this section.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

7. Ventilation.—(1) Effective and suitable provision shall be made for securing and maintaining, by the circulation of adequate supplies of fresh or artificially purified air, the ventilation of every room comprised in, or constituting, premises to which this Act applies, being a room in which persons are employed to work.

(2) The Minister may by regulations prescribe, for premises to which this Act applies or for any class of such premises, a standard of adequate ventilation conformity to which shall be obligatory and a sufficient compliance with the foregoing subsection.

NOTES

General effect of section. Sub-s. (1) imposes a duty to ventilate work-rooms in premises within the Act, and sub-s. (2) empowers the Minister to prescribe standards of adequate ventilation.

This section may be compared with the provisions as to the ventilation of factories contained in s. 4 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 248 and Redgrave's Factories Acts (20th Edn.) pp. 17 *et seq.*). It will be noted that s. 7 of the present Act, unlike s. 4 of the Factories Act 1961, contains no provision relating to the rendering harmless of injurious fumes, dust and other impurities. Section 38 (1) (a) of the Shops Act 1950 (67 Statutes Supp. 34), imposed a duty to ventilate shops. That subsection is repealed by the present Act (s. 91 and Sch. 2, *post*).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*. It is established that the ventilation provisions of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 239), give rise to such liability (*Nicholson v. Atlas Steel Foundry and Engineering Co., Ltd.*, [1957] 1 All E.R. 776).

For provisions relating to the ventilation of sanitary conveniences, see s. 9 (2), *post*.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Offences, etc. For provisions as to offences, see ss. 63, *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Statutory nuisances. For lack of ventilation as a statutory nuisance, see the Public Health Act 1936, s. 92 (1) (130 Statutes Supp. 141), and the Public Health (London) Act 1936, s. 82 (1) (15 Halsbury's Statutes (2nd Edn.) 935); and note that the Public Health Act 1936, s. 92 (3), is repealed by s. 91 (4) and Sch. 2, *post*.

See also the second paragraph of the note to s. 4, *ante*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*. See also as to "... work", s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

8. Lighting.—(1) Effective provision shall be made for securing and maintaining, in every part of premises to which this Act applies in which persons are working or passing, sufficient and suitable lighting, whether natural or artificial.

(2) The Minister may by regulations made as respects premises to which this Act applies, or any class of such premises, prescribe a standard of lighting conformity to which shall be obligatory and a sufficient compliance with the foregoing subsection.

(3) All glazed windows and skylights used for the lighting of any part of premises to which this Act applies in which work, or through which pass, any of the persons employed to work in the premises shall, so far as reasonably practicable, be kept clean on both the inner and outer surfaces and free from obstruction; but this subsection shall not affect the white-washing or shading of windows or skylights for the purpose of mitigating heat or glare.

(4) All apparatus installed at premises to which this Act applies for producing artificial lighting thereat in parts in which the securing of lighting is required by this section to be provided for shall be properly maintained.

NOTES

General effect of section. Sub-s. (1) imposes a duty to provide sufficient and suitable lighting in premises within the Act, and sub-s. (2) empowers the Minister to prescribe lighting standards. Sub-s. (3) provides that windows and skylights shall be kept clean and unobstructed, and sub-s. (4) requires the proper maintenance of lighting apparatus.

This section may be compared with the provisions as to lighting in factories contained in s. 5 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 248 and Redgrave's Factories Acts (20th Edn.) pp. 20 *et seq.*). Section 38 (3) of the Shops Act 1950 (67 Statutes Supp. 34), imposed a duty to maintain lighting in shops. That subsection is repealed by the present Act (s. 91 and Sch. 2, *post*).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*.

For provisions relating to the lighting of sanitary conveniences, see s. 9 (2), *infra*, and for provisions relating to the lighting of washing places, see s. 10 (2), *post*.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Sub-s. (3): Reasonably practicable. See the note to s. 6 (3), *ante*.

Special provisions as to common parts. For special provisions as to the lighting of the common parts of buildings, part of which consists of premises to which this Act applies, see ss. 42 (1), (3), (5), and 43 (1), (2), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*. See also as to "... work in the premises", s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

9. Sanitary conveniences.—(1) There shall, in the case of premises to which this Act applies, be provided, at places conveniently accessible to the persons employed to work in the premises, suitable and sufficient sanitary conveniences for their use.

(2) Conveniences provided in pursuance of the foregoing subsection shall be kept clean and properly maintained and effective provision shall be made for lighting and ventilating them.

(3) The Minister may make regulations determining for premises to which this Act applies, or for any class of such premises, what is suitable and sufficient provision for the purposes of subsection (1) of this section.

(4) Regulations under this section may provide that, where persons of both sexes are employed to work in premises to which the regulations apply, provision shall be deemed not to be suitable for the purposes of subsection (1) of this section unless it affords proper separate accommodation for persons of each sex.

(5) Subsection (1) of this section shall be deemed to be complied with in relation to any premises as regards any period during which there are in operation arrangements for enabling the persons employed to work in the premises to have the use of sanitary conveniences provided for the use of others, being conveniences whose provision would have constituted compliance with that subsection had they been provided in pursuance thereof for the first-mentioned persons and with respect to which the requirements of subsection (2) of this section are satisfied.

(6) Neither sections 44 to 46 of the Public Health Act 1936 nor section 29 of the Public Health (Scotland) Act 1897 nor section 106 of the Public Health (London) Act 1936 (which relate to the provision and repair of sanitary conveniences for factories, &c.) shall apply to premises to which this Act applies.

NOTES

The words in italics in sub-s. (6) are repealed as from 1st April 1965 by the London Government Act 1963, s. 93 (1), Sch. 18, Part II.

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963 19
SECTION 10

General effect of section. Sub-s. (1) imposes a duty to provide suitable and sufficient sanitary conveniences in the case of premises within the Act, and sub-s. (2) requires these to be kept in the condition specified. By sub-ss. (3) and (4) the Minister is empowered to make regulations determining what is suitable and sufficient provision. Sub-s. (5) enacts that sub-s. (1) may be complied with by an arrangement whereby those working in the premises have the use of sanitary conveniences provided for others, and sub-s. (6) excepts premises within the Act from the operation of certain specified enactments.

This section may be compared with the provisions as to sanitary conveniences in factories contained in s. 7 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 249 and Redgrave's Factories Acts (20th Edn.) pp. 25 *et seq.*). Section 38 (2) of the Shops Act 1950 (67 Statutes Supp. 34), imposed a duty to provide sanitary conveniences for shop workers. That subsection is repealed by the present Act (s. 91 and Sch. 2, *post*).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*.

The Minister has power to exempt premises of any class from the provisions of this section (s. 45 (1), *post*), and the enforcing authority has power to exempt particular premises from those provisions (s. 46 (1), *post*).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Sub-s. (6). In the case of premises to which the Act applies this provision excepts the operation of the specified enactments (which empower public health authorities to require the provision and maintenance of sanitary conveniences in individual cases).

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*; and see also as to common parts, ss. 42 (1), (6), 43 (1), (4), *post*, and as to contiguous fuel storage premises in single ownership, s. 44, *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*. See also as to "... work in the premises", s. 90 (3), *post*.

Public Health Act 1936, ss. 44-46. See 19 Halsbury's Statutes (2nd Edn.) 345 *et seq.*

Public Health (Scotland) Act 1897. 60 & 61 Vict. c. 38.

Public Health (London) Act 1936, s. 106. See 15 Halsbury's Statutes (2nd Edn.) 949. As to that section, see the first note, *supra*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

10. Washing facilities.—(1) There shall, in the case of premises to which this Act applies, be provided, at places conveniently accessible to the persons employed to work in the premises, suitable and sufficient washing facilities, including a supply of clean, running hot and cold or warm water and, in addition, soap and clean towels or other suitable means of cleaning or drying.

(2) Every place where facilities are provided in pursuance of this section shall be provided with effective means of lighting it and be kept clean and in orderly condition, and all apparatus therein for the purpose of washing or drying shall be kept clean and be properly maintained.

(3) The Minister may make regulations determining, for premises to which this Act applies, or for any class of such premises, what is suitable and sufficient provision for the purposes of subsection (1) of this section.

(4) Regulations under this section may provide that, where persons of both sexes are employed to work in premises to which the regulations apply, provision shall be deemed not to be suitable for the purposes of subsection (1) of this section unless it affords proper separate accommodation for persons of each sex.

(5) Subsection (1) of this section shall be deemed to be complied with in relation to any premises as regards any period during which there are in operation arrangements for enabling the persons employed to work in the premises to have the use of washing facilities provided for the use of others, being facilities whose provision would have constituted compliance with that subsection had they been provided in pursuance thereof for the

first-mentioned persons and which are provided at a place with respect to which the requirements of subsection (2) of this section are satisfied.

NOTES

General effect of section. Sub-s. (1) imposes a duty to provide suitable and sufficient washing facilities in the case of premises within the Act, and sub-s. (2) requires these to be kept in the condition specified. By sub-ss. (3) and (4) the Minister is empowered to make regulations determining what is suitable and sufficient provision. Sub-s. (5) enacts that sub-s. (1) may be complied with by an arrangement whereby those working in the premises have the use of washing facilities provided for others.

This section may be compared with the provisions as to washing facilities in factories contained in s. 58 (1) and (2) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 299 and Redgrave's Factories Acts (20th Edn.) pp. 145 *et seq.*). Section 38 (4) of the Shops Act 1950 (67 Statutes Supp. 34), imposed a duty to provide washing facilities in shops. That subsection is repealed by the present Act (s. 91 and Sch. 2, *post*).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*, and, in particular, *Reid v. The Westfield Paper Co., Ltd.*, 1957 S.C. 218, in which the Inner House of the Court of Session decided that a pursuer could recover damages in respect of dermatitis caused by a breach of the corresponding provision of the Factories Act 1937.

The Minister has power to exempt premises of any class from the provisions of this section (s. 45 (1), *post*), and the enforcing authority has power to exempt particular premises from the requirement to supply running water (s. 46 (2), *post*).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*; and see also as to common parts, ss. 42 (1), (7), 43 (1), (5), *post*, and as to contiguous fuel storage premises in single ownership, s. 44, *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*. See also as to "... work in the premises", s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*.

11. Supply of drinking water.—(1) There shall, in the case of premises to which this Act applies, be provided and maintained, at suitable places conveniently accessible to the persons employed to work in the premises, an adequate supply of wholesome drinking water.

(2) Where a supply of water provided at a place in pursuance of the foregoing subsection is not piped, it must be contained in suitable vessels and must be renewed at least daily; and all practicable steps must be taken to preserve it and the vessels in which it is contained from contamination.

(3) Where water a supply of which is provided in pursuance of this section is delivered otherwise than in a jet from which persons can conveniently drink, there shall either—

- (a) be provided, and be renewed so often as occasion requires, a supply of drinking vessels of a kind designed to be discarded after use; or
- (b) be provided a sufficient number of drinking vessels of a kind other than as aforesaid, together with facilities for rinsing them in clean water.

(4) Subsection (1) of this section shall be deemed to be complied with in relation to any premises as regards any period during which there are in operation arrangements for enabling the persons employed to work in the premises to avail themselves of a supply of drinking water provided and maintained for the use of others, being a supply whose provision and maintenance would have constituted compliance with that subsection had it been provided and maintained for the use of the first-mentioned persons, and—

- (a) where the supply provided is not piped, the requirements of subsection (2) of this section are satisfied as respects it and the vessels in which it is contained; and

- (b) where the water supplied is delivered as mentioned in subsection (3) of this section, the requirements of that subsection are satisfied.

NOTES

General effect of section. Sub-s. (1) imposes a duty to provide a supply of wholesome drinking water for premises within the Act, and sub-s. (2) requires the provision of suitable vessels and the renewal of the water where the supply is not piped. Sub-s. (3) prescribes the manner in which the supply may be delivered, and sub-s. (4) enacts that sub-s. (1) may be complied with by an arrangement whereby those working in the premises can avail themselves of a supply of drinking water provided for others.

This section may be compared with the provisions as to the supply of drinking water contained in s. 57 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 298 and Redgrave's Factories Acts (20th Edn.) p. 145).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Sub-s. (2): Practicable. See the note to s. 6 (3), *ante*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*. See also as to "work in the premises", s. 90 (3), *post*.

12. Accommodation for clothing.—(1) There shall, in the case of premises to which this Act applies,—

- (a) be made, at suitable places, suitable and sufficient provision for enabling such of the clothing of the persons employed to work in the premises as is not worn by them during working hours to be hung up or otherwise accommodated; and

- (b) be made, for drying that clothing, such arrangements as are reasonably practicable or, if a standard of arrangements for drying that clothing is prescribed, such arrangements as conform to that standard.

(2) Where persons are employed to do such work in premises to which this Act applies as necessitates the wearing of special clothing, and they do not take that clothing home, there shall, in the case of those premises,—

- (a) be made, at suitable places, suitable and sufficient provision for enabling that clothing to be hung up or otherwise accommodated; and

- (b) be made, for drying that clothing, such arrangements as are reasonably practicable or, if a standard of arrangements for drying that clothing is prescribed, such arrangements as conform to that standard.

- (3) The Minister may make regulations—

- (a) determining for premises to which this Act applies, or for any class of such premises, what is suitable and sufficient provision for the purposes of the foregoing provisions of this section;

- (b) prescribing for such premises as aforesaid, or for any class thereof, a standard of arrangements for drying clothing.

NOTES

General effect of section. In the case of premises within the Act, sub-s. (1) requires provision to be made for the accommodation and drying of the clothing of persons employed which is not worn during working hours. Sub-s. (2) requires provision to be made for the accommodation and drying of special clothing worn during work which is not taken home. By sub-s. (3) the Minister is empowered to make regulations determining what is suitable and sufficient provision for accommodating clothing and prescribing a standard of arrangements for drying clothing.

This section may be compared with the provisions as to accommodation for clothing contained in s. 59 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 300 and Redgrave's Factories Acts (20th Edn.) pp. 148, 149).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*. In *McCarthy v. Daily Mirror Newspapers, Ltd.*, [1949] 1 All E.R. 801, the Court of Appeal accepted without discussion that an action lay for a breach of s. 43 (1) of the Factories

Act 1937 (9 Halsbury's Statutes (2nd Edn.) 1035) (now s. 59 (1) of the Factories Act 1961), and the same has been expressly held in Scotland (*Barr v. Cruickshank & Co., Ltd.* (1958), 74 Sh. Ct. Rep. 218).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Suitable and sufficient provision. In *McCarthy v. Daily Mirror Newspapers, Ltd.*, *supra*, and *Barr v. Cruickshank & Co., Ltd.*, *supra*, it was held that the obligation under the corresponding provision of the Factories Act 1937, to provide "adequate and suitable accommodation for clothing not worn during working hours" did not include a duty to keep the clothing safe, but that nevertheless the risk of theft was an element to be taken into consideration in deciding whether the accommodation was suitable.

Persons. Cf. the note to s. 1, *ante*.

Reasonably practicable. See the note to s. 6 (3), *ante*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*. See also as to "... work ...", s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

13. Sitting facilities.—(1) Where persons who are employed to work in office, shop or railway premises have, in the course of their work, reasonable opportunities for sitting without detriment to it, there shall be provided for their use, at suitable places conveniently accessible to them, suitable facilities for sitting sufficient to enable them to take advantage of those opportunities.

(2) Where persons are employed to work in a room which comprises, or is comprised in or constitutes, shop premises, being a room whereto customers are invited to resort, and have in the course of their work, reasonable opportunities for sitting without detriment to it, facilities provided for their use in pursuance of subsection (1) of this section shall be deemed not to be sufficient if the number of seats provided and the number of the persons employed are in less ratio than 1 to 3.

(3) It shall be the duty of the employer of persons for whose use facilities are provided in pursuance of the foregoing provisions of this section to permit them to use them whenever the use thereof does not interfere with their work, and if he fails so to do he shall be guilty of an offence.

NOTES

General effect of section. Sub-s. (1) imposes a general duty to provide sitting facilities for persons employed in premises within the Act when such persons can sit without detriment to their work, and in the case of public rooms in shops, sub-s. (2) lays down the number of seats to be provided. Sub-s. (3) makes it an offence for an employer not to permit the use of such facilities when their use does not interfere with work.

This section may be compared with the provisions as to sitting facilities in factories contained in s. 60 (1) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 300 and Redgrave's Factories Acts (20th Edn.) pp. 149, 150). Section 37 of the Shops Act 1950 (67 Statutes Supp. 33), imposed a duty to provide seats for female employees in shops. This section is repealed by the present Act (s. 91 and Sch. 2, *post*).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*.

Special provision is made in the case of sedentary workers by s. 14, *infra*.

Sub-s. (1): Office, shop or railway premises. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*; and note sub-s. (3) of this section.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "office premises", see s. 1 (2), (5), *ante*; for "railway premises", see s. 1 (4), (5), *ante*; for "... shop premises" see s. 1 (3), (5), *ante*. See also as to "work in ... premises", s. 90 (3), *post*.

14. Seats for sedentary work.—(1) Without prejudice to the general obligation imposed by the last foregoing section, where any work done in any premises to which this Act applies is of such a kind that it (or a substantial

part of it) can, or must, be done sitting, there shall be provided for each person employed to do it there a seat of a design, construction and dimensions suitable for him and it, together with a foot-rest on which he can readily and comfortably support his feet if he cannot do so without one.

(2) A seat provided in pursuance of the foregoing subsection, and a foot-rest so provided that does not form part of a seat, must be adequately and properly supported while in use for the purpose for which it is provided.

(3) For the purpose of subsection (1) of this section, the dimensions of an adjustable seat shall be taken to be its dimensions as for the time being adjusted.

NOTES

General effect of section. In the case of sedentary workers in premises to which the Act applies, sub-s. (1) imposes a duty to provide a suitable seat and, where necessary a foot-rest. Sub-s. (2) requires such a seat and foot-rest to be properly supported, and sub-s. (3) defines what is meant by the dimensions of an adjustable seat.

This section may be compared with the provisions as to sitting facilities in factories contained in s. 60 (2), (3) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 300 and Redgrave's Factories Acts (20th Edn.) pp. 149, 150).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*. See also as to "... do it there", s. 90 (3), *post*.

15. Eating facilities.—Where persons employed to work in shop premises eat meals there, suitable and sufficient facilities for eating them shall be provided.

NOTES

General effect of section. Facilities for eating meals are to be provided for shop-workers.

Section 38 (5) of the Shops Act 1950 (67 Statutes Supp. 34), imposed a duty to provide eating facilities for shop-workers. That subsection is repealed by the present Act (s. 91 and Sch. 2, *post*).

As to liability in tort, see the note, "General effect of section", to s. 4, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Shop premises. See ss. 1 to 3, *ante*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Definitions. For "employed", see s. 90 (1), *post*; for "shop premises", see s. 1 (3), (5), *ante*.

16. Floors, passages and stairs.—(1) All floors, stairs, steps, passages and gangways comprised in premises to which this Act applies shall be of sound construction and properly maintained and shall, so far as is reasonably practicable, be kept free from obstruction and from any substance likely to cause persons to slip.

(2) For every staircase comprised in such premises as aforesaid, a substantial hand-rail or hand-hold shall be provided and maintained, which, if the staircase has an open side, shall be on that side; and in the case of a staircase having two open sides or of a staircase which, owing to the nature of its construction or the condition of the surface of the steps or other special circumstances, is specially liable to cause accidents, such a hand-rail or hand-hold shall be provided and maintained on both sides.

(3) Any open side of a staircase to which the last foregoing subsection applies, shall also be guarded by the provision and maintenance of efficient means of preventing any person from accidentally falling through the space between the hand-rail or hand-hold and the steps of the staircase.

(4) All openings in floors comprised in premises to which this Act applies shall be securely fenced, except in so far as the nature of the work renders such fencing impracticable.

(5) The foregoing provisions of this section shall not apply to any such part of any fuel storage premises as is in the open, but in relation to any such part the following provisions shall have effect, namely,—

- (a) the surface of the ground shall be kept in good repair;
- (b) all steps and platforms shall be of sound construction and properly maintained;
- (c) all openings in platforms shall be securely fenced, except in so far as the nature of the work renders such fencing impracticable.

NOTES

General effect of section. Sub-s. (1) imposes duties designed to secure the safety of floors, stairs, steps, passages and gangways in premises within the Act. Sub-s. (2) requires the provision of hand-rails or hand-holds on staircases, and sub-s. (3) provides for the guarding of open staircases. By sub-s. (4), openings in floors must be securely fenced. Sub-s. (5) substitutes special provisions for the foregoing in the case of fuel storage premises.

This section may be compared with the similar provisions relating to factories contained in s. 28 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 271 and Redgrave's Factories Acts (20th Edn.) pp. 85 *et seq.*).

Sub-s. (1): Floors . . . gangways. These terms are not defined in the Act, and "where words are . . . perfectly familiar all one can do is to say whether or not one regards them as apt to cover or describe the circumstances in question in any particular case" (*per* Somervell, L.J., in *Bath v. British Transport Commission*, [1954] 2 All E.R. 542, C.A.). Thus, in relation to the cognate provisions of the Factories Act 1961, a plank across a duct may be a "gangway" (*Hosking v. De Havilland Aircraft Co., Ltd.*, [1949] 1 All E.R. 540), but "mother earth" has been held not to be a "floor", "passage" or "gangway" (*Newberry v. Joseph Westwood & Co., Ltd.*, [1960] 2 Lloyd's Rep. 37). In *Tate v. Swan Hunter & Wigham Richardson, Ltd.*, [1958] 1 All E.R. 150, C.A., Lord Denning (at p. 152) said that the ordinary and natural meaning of a floor is something within walls, indoors, on which people walk or stand. In this case the Court of Appeal held that a staging of planks on a crane gantry, the purpose of which was to allow workmen to get from one part of the gantry to another, was not a "floor" within s. 25 (3) of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 1018) (now s. 28 (4) of the Factories Act 1961). With this case may be compared *Morris v. P.L.A.* (1950), 84 Lloyd, L.R. 564 (floor of gantry held to be within the section); *Taylor v. R. and H. Green and Silley Weir, Ltd.* (1950), 84 Lloyd, L.R. 570 (affirmed by the C.A. (1951), 1 Lloyd, L.R. 345) (soil around inside of dry dock held to be a floor) and *Harrison v. Metropolitan Vickers Electrical Co., Ltd.*, [1954] 1 All E.R. 404 (sand bed of foundry held to be a floor).

Of sound construction and properly maintained. It is submitted that these words should receive the same interpretation as in s. 28 (1) of the Factories Act 1961. There, it has been held that the duty flowing from the use of these words is absolute and applies primarily to the structural condition of floors, etc., but it may also apply to something put upon a floor, if it can be regarded as part of the floor although not incorporated in it (*Latimer v. A.E.C., Ltd.*, [1953] A.C. 643). Where, therefore, a floor, etc., is in some transient and exceptional condition, or there is temporarily something upon it which gives rise to danger there has been no breach of this obligation if the floor, etc., is otherwise sound. In determining whether a floor is "of sound construction and properly maintained" regard must be had to the purpose for which it is intended to be used (*Mayne v. Johnstone and Cumbers, Ltd.*, [1947] 2 All E.R. 159). In each case the criterion is safety, which is a question of degree dependent upon the particular facts (*Payne v. Weldless Steel Tube Co., Ltd.*, [1956] 3 All E.R. 612; [1956] 1 Q.B. 196, C.A.).

Reasonably practicable. See the note to s. 6 (3), *ante*. In *Braham v. J. Lyons & Co., Ltd.*, [1962] 3 All E.R. 281, C.A., Lord Denning, M.R., said *obiter* (at p. 283) that the effect of the qualification "so far as is reasonably practicable" was that all reasonable measures must be taken to keep the floor free from slippery substances, and that the employer is liable for a failure both on the part of his servants and on the part of his independent contractors. Donovan, L.J. (at p. 284), thought that a momentary lapse on the part of a minor employee would enable the employer to be acquitted of an offence under s. 25 (1) of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 1017) (now s. 28 (1) of the Factories Act 1961), by virtue of the provisions of s. 137 of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 1107), but he expressed no view upon the effect of such a lapse in the context of civil liability.

Obstruction. In *Drummond v. Harland Engineering Co.*, 1963 S.L.T. 115, the Outer House of the Court of Session, construing s. 25 (1) of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 1017) (now s. 28 (1) of the Factories Act 1961), held that a vertical angle iron projecting half an inch above the floor of a foundry and situated at the corner of a plate supporting a moulding machine was not an "obstruction" but was part of a machine which was a fixture on the premises. An obstruction,

it was said, connotes something that should not be there, in the sense that it is not a normal part of the plant or equipment, such as a heap of rubbish.

Substance. In *Hall v. Fairfield Shipbuilding & Engineering Co.*, 1962 S.L.T. 206, the Outer House of the Court of Session held that a short length of metal rod which had fallen from a bench was a "substance" likely to cause persons to slip within s. 25 (1) of the Factories Act 1937 (now s. 28 (1) of the Factories Act 1961). They held, further, that the words "likely to cause persons to slip" qualify only the word "substance", and do not limit the area to be kept free.

Likely to cause persons to slip. It is submitted that in determining what is "likely" to cause persons to slip similar considerations apply as are applied to the question of whether a part of a machine is a "dangerous part" within the meaning of s. 17 (1), *infra*, for which see the note, "Dangerous part", to that subsection.

Sub-s. (2): Staircase. See the general remarks on interpretation in the note, "Floors . . . gangways", to sub-s. (1), *ante*. See, also *Kimpton v. Steel Company of Wales*, [1960] 2 All E.R. 274 (three steps from floor to part of a machine in factory held not to be a "staircase").

Hand-rail. A hand-rail is a rail that can be gripped by the hand; it need not necessarily act as a physical barrier; it need only be such a rail as to enable any person, by gripping it, to steady himself against falling (*Corn v. Weir's Glass (Hanley), Ltd.*, [1960] 2 All E.R. 300, so interpreting reg. 27 (1) of the Building (Safety, Health and Welfare) Regulations 1948 (S.I. 1948 No. 1145)).

Hand-hold. A hand-hold is something which a man can hold or grab from time to time as and when he wishes to do so; see *Wigley v. British Vinegars, Ltd.*, [1961] 3 All E.R. 418, C.A., affirmed (without touching the point) [1962] 3 All E.R. 161, H.L., and so construing s. 26 (2) of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 1018) (now s. 29 (2) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 272)).

Special circumstances . . . accidents. See the discussion of these words, in the context of s. 28 (2) of the Factories Act 1961, in *Harris v. Rugby Portland Cement Co., Ltd.*, [1955] 2 All E.R. 500.

Sub-s. (4): Openings in floors. In certain circumstances an excavation may constitute an "opening" in a floor (*Harrison v. Metropolitan-Vickers Electrical Co., Ltd.*, [1954] 1 All E.R. 404, decided on the enactment which is now s. 28 (4) of the Factories Act 1961). Compare *Tate v. Swan Hunter and Wigham Richardson, Ltd.*, [1958] 1 All E.R. 150, C.A., and see *Moorcroft v. Thomas Powles & Sons, Ltd.*, [1962] 3 All E.R. 741, D.C.

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Securely fenced. It is submitted that "securely fenced" in this context has the same meaning as in the context of fencing dangerous parts of machinery, as to which see the note, "Securely fenced", to s. 17 (1), *post*.

Impracticable. See the note to s. 6 (3), *ante*.

Sub-s. (5): Fuel storage premises. For meaning, see s. 1 (3) (a) (v), (5), *ante*.

Common parts. For the application of sub-ss. (1)-(3) of this section to common parts of buildings, part of which consists of premises to which this Act applies, see ss. 42 (4), (5), 43 (3), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

17. Fencing of exposed parts of machinery.—(1) Every dangerous part of any machinery used as, or forming, part of the equipment of premises to which this Act applies shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person working in the premises as it would be if securely fenced.

(2) In so far as the safety of a dangerous part of any machinery cannot, by reason of the nature of the operation effected by means of the machinery, be secured by means of a fixed guard, the requirements of the foregoing subsection shall be deemed to be complied with if a device is provided that automatically prevents the operator from coming into contact with that part.

(3) In determining, for the purposes of subsection (1) of this section, whether a moving part of any machinery is in such a position or of such construction as is therein mentioned, no account shall be taken of any person carrying out while the part is in motion an examination thereof or any lubrication or adjustment shown by the examination to be immediately

necessary, if the examination, lubrication or adjustment can only be carried out while the part is in motion.

(4) Fencing provided in pursuance of the foregoing provisions of this section shall be of substantial construction, be properly maintained and be kept in position while the parts required to be fenced are in motion or use, except when any such parts are necessarily exposed for examination and for any lubrication or adjustment shown by the examination to be immediately necessary.

(5) Subsection (3) of this section, and so much of subsection (4) thereof as relates to the exception from the requirement thereby imposed, shall only apply where the examination, lubrication or adjustment in question is carried out by such persons who have attained the age of eighteen as may be specified in regulations made by the Minister and all other such conditions as may be so specified are complied with.

NOTES

General effect of section. Sub-s. (1) imposes a duty to fence every dangerous part of machinery forming equipment of premises within the Act unless it is safe by reason of its position or construction. Sub-s. (2) provides for compliance with sub-s. (1), in certain cases, by an automatic device which prevents the operator from coming into contact with the dangerous part. Sub-s. (3) makes special provision for the examination, lubrication or adjustment of moving parts, and sub-s. (4) requires fencing to be of substantial construction, to be properly maintained, and to be kept in position. Sub-s. (5) provides that the relaxation of fencing requirements in the case of examination, lubrication or adjustment is only to apply in the case of such persons over 18 as may be specified by regulation.

This section may be compared with the provisions of ss. 14 to 16 of the Factories Act 1961, for which see 41 Halsbury's Statutes (2nd Edn.) 256 *et seq.*, and Redgrave's Factories Acts (20th Edn.) pp. 46 *et seq.*, and the "Introductory Note to Sections 12-16" at pp. 35 *et seq.* thereof. The wording of s. 17 of the present Act is plainly modelled upon that of ss. 14 to 16 of the Factories Act 1961, and where the phraseology is identical it should, it is submitted, bear the same interpretation as has been accorded to the cognate provisions of the Factories Act 1961. (As to the judicial interpretation of statutes *in pari materia*, see 36 Halsbury's Laws (3rd Edn.) 403, 404). The language of ss. 14 to 16 of the Factories Act 1961 (and that of the corresponding provisions of the Factories Act 1937, which were replaced by those of the later Act) has been the subject of extensive judicial interpretation. In the notes which follow an attempt is made to provide a short exegesis of the case law relating to the factories legislation; in accordance with the principle cited earlier in this note, that case law is authoritative upon the interpretation of s. 17 of the present Act, save where the context may indicate that a departure from the meaning of the factories legislation is intended.

Sub-s. (1): Dangerous part. The test, whether a part is a dangerous part, is whether it might be a reasonably foreseeable cause of injury to anybody acting in a way in which a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur (*Close v. Steel Company of Wales, Ltd.*, [1961] 2 All E.R. 953, H.L.). In deciding what is reasonably foreseeable both the behaviour of persons employed and the behaviour of the machine must be considered. Reasonably foreseeable behaviour on the part of persons employed includes not only prudent, alert and skilled behaviour but also reasonably foreseeable inadvertence and indolence (*Mitchell v. North British Rubber Co.*, 1945 S.C. (J.) 69; *John Summers & Sons, Ltd. v. Frost*, [1955] 1 All E.R. 870, H.L.). The behaviour of the machine which is here material is its normal behaviour in the ordinary course of working, and not aberrant behaviour which cannot be foreseen (*Eaves v. Morris Motors, Ltd.*, [1961] 3 All E.R. 233, C.A.).

Machinery. This term includes machinery not driven by mechanical power (*Richard Thomas & Baldwins, Ltd. v. Cummings*, [1955] 1 All E.R. 285, H.L.). What is "machinery" may be a matter of impression. Thus, in *Quintas v. National Smelting Co., Ltd.*, [1961] 1 All E.R. 630, C.A., the defendants operated in their factory an overhead travelling cable-way supported by stanchions, so that material might be transported from one part of the factory to another. The material was placed in buckets suspended from the cable, which at one part of the route passed close to a flat roof, on which workmen were expected to come. It was held that the cable-way, regarded as a whole, was not one piece of machinery within s. 14 of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 1009), and therefore that the whole of the cable-way need not be fenced. The mere fact that apparatus moves about the premises does not, it seems, prevent its being "machinery", as where a coke distributing machine travels on rails (see *Dobson v. Colvilles*, 1958 S.L.T. (notes) 30, and compare *Quintas v. National Smelting Co., Ltd.*, *supra*, per Sellers, L.J., at [1961] 1 All E.R. 635).

In order that s. 17 (1) of the present Act may apply the dangerous part must be part of "machinery". For this purpose a distinction must be drawn between material which is being worked upon in a machine, and which is dangerous when in motion, and parts of the machinery itself which are dangerous when in motion. It is only in the latter case that the obligation to fence arises (*Eaves v. Morris Motors, Ltd.*, [1961] 3 All E.R. 233, C.A.). It is probably the case that there is a duty to fence where the material to be worked upon is not itself dangerous, but becomes so by reason of its juxtaposition with part of the machine itself (see *per* Holroyd Pearce, L.J., in *Eaves v. Morris Motors, Ltd.*, *supra*, reviewing the earlier, and conflicting, authorities).

Used as . . . equipment. This qualification does not appear in s. 14 (1) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 256), which applies in terms to "any machinery, other than prime movers and transmission machinery". Nonetheless, the terms of s. 14 (1) of that Act have been qualified by the courts, which have so construed them as to take outside the ambit of that subsection machinery in a factory which is not used for or ancillary to its manufacturing processes, such as machinery which is itself a product of those processes (*Parvin v. Morton Machine Co., Ltd.*, [1952] 1 All E.R. 670, H.L.). Even machinery ancillary to the manufacturing processes is not "machinery" within the section if, on a commonsense construction, the section could not have been intended to apply to it; thus vehicles used in a factory are outside the section (*Cherry v. International Alloys, Ltd.*, [1960] 3 All E.R. 264, C.A.). By analogy with *Parvin's* case, *supra*, it would seem (for example) that machinery which is for sale in a shop is not "equipment" and is not, therefore, within s. 17 (1) of the present Act; and by analogy with *Cherry's* case, *supra*, it would seem that trucks and other vehicles, although forming part of the equipment of premises within the Act, are nonetheless outside the scope of s. 17 (1).

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Securely fenced. The obligation to fence securely is not unlimited in scope, but is restricted to fencing against certain hazards only. Thus, the dangerous part must be fenced securely for the purpose of preventing the body of the operator from coming into contact with it; but it need not, in general, be fenced in such a manner as to prevent something that the worker is holding, such as a tool, from coming into contact with it (*Sparrow v. Fairey Aviation Co., Ltd.*, [1962] 3 All E.R. 706, H.L.). It is undecided whether there is a duty to fence so as to prevent a worker's clothing from coming into contact with the dangerous part (see the discussion of this point in *Sparrow's* case, *supra*). The obligation to fence does not extend to require that the dangerous part be fenced securely for the purpose of preventing fragments of that dangerous part from flying out of the machine (*Close v. Steel Company of Wales, Ltd.*, [1961] 2 All E.R. 953, H.L.), or for the purpose of preventing articles not part of the machinery (such as material being worked upon) being ejected (*Nicholls v. Austin (Leyton), Ltd.*, [1946] 2 All E.R. 92, H.L.; *Close v. Steel Company of Wales, Ltd.*, *supra*).

The duty to fence securely is an absolute one, so that if the result of a machine being securely fenced should be that it does not remain commercially practicable or mechanically possible, that does not affect the obligation (*John Summers & Sons, Ltd. v. Frost*, [1955] 1 All E.R. 870, H.L.).

The extent of the duty is to fence "securely", that is to say, effectively to protect the workman from the danger of contact with the exposed part of the machine (*John Summers & Sons, Ltd. v. Frost*, *supra*). In considering whether secure fencing has been achieved the behaviour of persons employed is material, and the same criterion of reasonable foreseeability, discussed in the note, "Dangerous part", *supra*, must be used for this purpose (*John Summers, Ltd. v. Frost*, *supra*; *Burns v. Joseph Terry & Sons, Ltd.*, [1950] 2 All E.R. 987, C.A.). The fence supplied must comply with the provisions of sub-s. (4) of the present section (*Smith v. Morris Motors, Ltd.*, [1949] 2 All E.R. 715, D.C., a decision upon the corresponding provision of the Factories Act 1937). The fence need not, however, be so constructed that it cannot be climbed over, or broken down, by an employee who is determined to get at the machinery (*per* Lord Morton in *John Summers & Sons, Ltd. v. Frost*, *supra*, at p. 876; and see *Carr v. Mercantile Produce Co., Ltd.*, [1949] 2 All E.R. 531, D.C.).

Unless it is in such a position . . . fenced. The mere fact that unfenced machinery is inaccessible save by a ladder is not enough to bring it within this exception (*Butler v. Glacier Metal Co.* (1924) (D.C. unreported, but see [1926] 1 K.B. at p. 317; *Atkinson v. London & N.E. Ry. Co.*, [1926] 1 K.B. 313; [1925] All E.R. Rep. 346, D.C.; *Hodkinson v. Henry Wallwork & Co., Ltd.*, [1955] 3 All E.R. 236, C.A.). It is submitted that the test of safety for the purpose of the exception involves the same criterion of reasonable foresight (applied in a reverse sense) as that which is involved in deciding whether a part is a dangerous part (see the note "Dangerous part", *supra*). See also the provisions of s. 17 (3). The persons with respect to whom the dangerous part must be safe by position or construction are persons "working in the premises"; an employee of the occupier who voluntarily uses a machine after hours for private purposes is not "working in the premises" within s. 17 (1) (*Napieralski v. Curtis (Contractors), Ltd.*, [1959] 2 All E.R. 426). On the other hand, the general expression, "person working in the premises", is apt to cover any person working for the purposes of the premises, and thus includes not only the employees of the occupier, but all

persons working therein, such as self-employed persons and persons employed by outside contractors (*John Summers & Sons, Ltd., v. Frost, supra*; *Wigley v. British Vinegars, Ltd.*, [1962] 3 All E.R. 161, H.L.).

Sub-s. (3). This subsection corresponds to s. 15 (1) (a) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 259).

In motion. It is submitted that these words bear the same meaning as in sub-s. (4) of the present section; see the note, "In motion or use", *infra*.

Sub-s. (4). This subsection corresponds to s. 16 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 259). It indicates, without imposing any separate and distinct obligation, how and when the duty under s. 17 (1) to (3) is to be carried out, and it also provides an exception to the obligation to fence thereunder (*Smith v. Morris Motors, Ltd.*, [1949] 2 All E.R. 715, D.C.).

Properly maintained. This expression occurs in the Factories Act 1961; for example, see s. 22 (1) of that Act (41 Halsbury's Statutes (2nd Edn.) 264). The word "maintained" is expressly defined in that Act (by s. 176 (1) thereof (41 Halsbury's Statutes (2nd Edn.) 407)), but there is no such definition in the present Act. Nonetheless, it is submitted that, as in the case of the Factories Act 1961, s. 22 (1) (see *Galashields Gas Co., Ltd. v. O'Donnell (or Millar)*, [1949] 1 All E.R. 319; [1949] A.C. 275, H.L.), the obligation properly to maintain is here an absolute one, and describes a result to be achieved rather than the means of achieving it.

In motion or use. The interpretation of the corresponding phrase in s. 16 of the Factories Act 1937 ("in motion or in use") was discussed in *Richard Thomas & Baldwins, Ltd. v. Cummings*, [1955] 1 All E.R. 285, H.L., where it was held that "in motion" was not the same thing as "in movement". Following this decision, the Court of Appeal, in *Knight v. Leamington Spa Courier, Ltd.*, [1961] 2 All E.R. 666, held that the slow sporadic rotation or intermittent movement of machinery intended to place it more advantageously for cleaning or repair did not constitute its being "in motion or in use". The court emphasised the difficulty of giving any general ruling on the meaning of the words, "in motion or in use", and stated that the question was largely one of fact and degree having regard to the circumstances of the particular case.

Necessarily exposed. The burden of proving that the excepting words apply lies upon the employer, who must prove that the parts required to be fenced were necessarily exposed for the operation actually being done at the material time (*Nash v. High Duty Alloys, Ltd.*, [1947] 1 All E.R. 363; [1947] 1 K.B. 377, C.A.).

For examination . . . lubrication or adjustment. These words do not include repair (*Richard Thomas & Baldwins, Ltd. v. Cummings*, [1955] 1 All E.R. 285, H.L.) or cleaning (*Knight v. Leamington Spa Courier, Ltd.*, [1961] 2 All E.R. 666, C.A.).

Sub-s. (5): Age. A person attains a given age on the first moment of the day preceding the corresponding anniversary of his birth; see *Re Shurey, Savory v. Shurey*, [1918] 1 Ch. 263; and cf. *R. v. Scoffin*, [1930] 1 K.B. 741, at p. 743.

The Minister. *I.e.*, the Minister of Labour; see s. 90 (1), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*.

18. Avoidance of exposure of young persons to danger in cleaning machinery.—(1) No young person employed to work in premises to which this Act applies shall clean any machinery used as, or forming, part of the equipment of the premises if doing so exposes him to risk of injury from a moving part of that or any adjacent machinery.

(2) In this section "young person" means a person who has not attained the age of eighteen.

NOTES

General effect of section. Persons under eighteen must not clean machinery if in doing so they are exposed to risk of injury.

This section may be compared with the corresponding provisions as to factories contained in s. 20 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 263 and Redgrave's Factories Acts (20th Edn.) p. 65). It should be noted that, in contrast with s. 20 of that Act, the present Act does not prohibit the cleaning of machines by women over eighteen.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Clean. In *Taylor v. Dawson (Mark) & Son, Ltd.*, [1911] 1 K.B. 145, a child was removing fluff from the rollers of a machine in motion. The fluff would have clogged the machine had it not been removed, but it had a commercial value, and was in fact sold. It was held that the child was "cleaning" the machine.

Machinery. See the note "Machinery", to s. 17 (1), *ante*.

Used as . . . equipment. See the note "Used as . . . equipment", to s. 17 (1), *ante*.

Sub-s. (2): Age. See the note to s. 17, *ante*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed" see s. 90 (1), (4), *post*. See also as to ". . . work in premises", etc., s. 90 (3), *post*; and note as to "young person", sub-s. (2) of this section.

19. Training and supervision of persons working at dangerous machines.—(1) No person employed to work in premises to which this Act applies shall work there at any machine to which this section applies unless he has been fully instructed as to the dangers arising in connection with it and the precautions to be observed, and—

- (a) has received a sufficient training in work at the machine; or
- (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(2) This section applies to such machines as may be prescribed by order of the Minister, being machines which in his opinion are of such a dangerous character that persons ought not to work at them unless the foregoing requirements are complied with.

NOTES

General effect of section. The Minister is given power to prescribe by order machines of a dangerous character, and when he does so no person may work at such a machine unless he has been instructed in its dangers and the precautions to be observed and has either been trained or is supervised.

This section may be compared with the corresponding provisions as to factories contained in s. 21 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 264 and Redgrave's Factories Acts (20th Edn.) pp. 65, 66). It should be noted that, in contrast with s. 21 of that Act, which applies only to persons under eighteen, the present section applies to persons of any age.

Sub-s. (1): No person . . . shall work. The section imposes no duty upon the person employed (*M'Cafferty v. Brown*, 1950 S.C. 300, decided upon the cognate provisions of s. 21 of the Factories Act 1937 (9 Halsbury's Statutes (2nd Edn.) 1013)).

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Machine. See the note "Machinery", to s. 17 (1), *ante*.

Sub-s. (2): Opinion. See the note to s. 6, *ante*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*. See also as to ". . . work in premises", etc., s. 90 (3), *post*.

Order under this section. No order had been made under this section up to 14th October 1963.

For provisions as to orders, see s. 80, *post*.

20. Regulations for securing health and safety.—(1) The Minister may, as respects premises to which this Act applies or any class of such premises, make special regulations for protecting persons, or persons of any class, working in such premises or, as the case may be, in such premises of the class to which the regulations apply, against risks of bodily injury or injury to health arising out of the use of any machinery, plant, equipment, appliance or substance, the carrying on of any operation or the use of any process.

(2) Regulations under this section may make any such provision for the purpose aforesaid as appears to the Minister to meet the necessity of the case so far as is reasonably practicable, and may impose obligations, restrictions and prohibitions on those who employ persons to work as aforesaid, on persons employed so to work, and on others.

(3) Without prejudice to the generality of the last foregoing subsection, regulations under this section may provide for—

- (a) regulating or prohibiting the use of any machinery, plant, equipment, appliance or substance, the carrying on of any operation or the use of any process;
 - (b) imposing requirements with respect to the construction, installation, examination, repair, maintenance, alteration, adjustment and testing of machinery, plant, equipment or appliances and the safeguarding of dangerous parts thereof;
 - (c) prohibiting the sale or letting on hire for use in premises in Great Britain to which this Act applies (or, where the regulations relate to a class of such premises, for use in such premises of that class) of any machinery, plant, equipment or appliance which does not comply with requirements of the regulations;
 - (d) any incidental, supplementary or consequential matters for which it appears to the Minister requisite or expedient to provide for the purposes of the regulations.
- (4) A person who contravenes a provision of regulations under this section (other than a provision having effect by virtue of paragraph (c) of the last foregoing subsection) shall be guilty of an offence.
- (5) A person who contravenes a provision of regulations having effect by virtue of paragraph (c) of subsection (3) of this section or, as agent of the seller or hirer, causes or procures any machinery, plant, equipment or appliance to be sold or let on hire in contravention of any such provision, shall be guilty of an offence and liable to a fine not exceeding two hundred pounds.
- (6) An offence under the last foregoing subsection shall, where necessary for conferring jurisdiction on a court to entertain proceedings for the offence, be deemed to have been committed in the place where the machinery, plant, equipment or appliance in question is for the time being.
- (7) Proceedings for an offence under subsection (5) of this section may be commenced at any time within twelve months from the time when the offence was committed.
- (8) Where a contravention of a provision of regulations under this section consists in a failure to do anything at or within a time specified in the regulations, and the regulations provide that this subsection shall apply to a failure so to do it, the contravention shall be deemed to continue until that thing is done.
- (9) A requirement imposed by virtue of subsection (3)(b) of this section with respect to the safeguarding of dangerous parts of machinery may be expressed to take effect in addition to, or in lieu of, a requirement imposed by section 17 of this Act.
- (10) So far as regards machinery, plant, equipment or appliances, nothing in this section shall be construed as restricting the exercise of the powers thereby conferred to the making of provision with respect to machinery, plant, equipment or appliances wholly situate in premises to which this Act applies.

NOTES

General effect of section. The Minister is empowered to make special regulations for protecting workers from injury. Sub-ss. (1) and (2) contain a general regulation-making power in respect of injury arising out of the use of machinery, plant, etc., and the carrying on of any operation or process. Sub-s. (3) contains specific regulation-making powers. Sub-ss. (4) to (8) provide for the enforcement of regulations. Sub-s. (9) provides that regulations with respect to the safeguarding of dangerous parts of machinery may take effect in addition to, or in lieu of, a requirement under s. 17 of the Act, *ante*; and sub-s. (10) makes it clear that the regulation-making powers with regard to machinery, plant, etc., are not confined to machinery, plant, etc., wholly situate in premises within the Act.

The power to make special regulations for safety and health under the Factories Act 1961, is contained in s. 76 thereof (41 Halsbury's Statutes (2nd Edn.) 315 and Redgrave's Factories Acts (20th Edn.) pp. 196 *et seq.*).

The procedure for making special regulations under the present Act is prescribed by s. 80 (8) and Sch. 1, *post*.

Save as is provided by sub-s. (9) of this section, there is no power to modify the provisions of the Act by regulations made under this section (compare s. 76 (2) (c) of the Factories Act 1961).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Special regulations. As to special regulations, see s. 80 (8) and Sch. 1, *post*.

Sub-s. (2): Appears. The word "appear" is clearly used to make the Minister, acting in good faith, the sole judge of the matter in question; see, in particular, *Robinson v. Sunderland Corpn.*, [1899] 1 Q.B. 751, at pp. 756, 757, *per* Channell, J.; *R. v. Comptroller-General of Patents, Ex parte Bayer Products, Ltd.*, [1941] 2 All E.R. 677; [1941] 2 K.B. 306, C.A., and *Point of Ayr Collieries, Ltd. v. Lloyd-George*, [1943] 2 All E.R. 546, C.A. See, however, in particular, *Ross-Clunis v. Papadopoulos*, [1958] 2 All E.R. 23, P.C., and *Customs and Excise Comrs. v. Cure and Deeley*, [1961] 3 All E.R. 641; [1962] 1 Q.B. 340; and note s. 80 (2), *post*.

Sub-s. (3): Great Britain. *I.e.*, England, Wales and Scotland; see the Union with Scotland Act 1706 (c. 11), preamble, art. 1 (4 Halsbury's Statutes (2nd Edn.) 167), and the Wales and Berwick Act 1746 (c. 42), s. 3 (24 Halsbury's Statutes (2nd Edn.) 183).

Sub-s. (4): Guilty of an offence. For further provisions, see ss. 64 *et seq.*, 70, 86 (1), *post*; and note sub-s. (8) of this section.

Sub-s. (5): Causes or procures. In *McLeod (or Houston) v. Buchanan*, [1940] 2 All E.R. 179, H.L., at p. 187, Lord Wright said: "To cause the user involves some express or positive mandate from the person 'causing' to the other person, or some authority from the former to the latter, arising in the circumstances of the case". See also, in particular, *Kirkheaton District Local Board v. Ainely, Sons & Co.*, [1892] 2 Q.B. 274, C.A.; *Shave v. Rosner*, [1954] 2 All E.R. 280; [1954] 2 Q.B. 113; *Lovelace v. Public Prosecutions Director*, [1954] 3 All E.R. 481; and *Ellis v. Smith*, [1962] 3 All E.R. 954.

"Procure" has been defined as "obtain by care or effort" and can be more simply paraphrased as "see to it"; see *Re Royal Victoria Pavilion Ramsgate, Whelan v. F.T.S. (Great Britain), Ltd.*, [1961] 3 All E.R. 83; [1961] Ch. 581, at p. 86 and p. 587, respectively. It would, therefore, seem that the word "procures" adds nothing to the scope of the phrase "causes or procures"; see also *R. v. Mackenzie and Higginson* (1910), 75 J.P. 159, and *R. v. Christian* (1913), 78 J.P. 112.

Guilty of an offence and liable, etc. For further provisions, see ss. 65 *et seq.*, 86 (1), *post*; and note sub-ss. (6)–(8) of this section.

Sub-s. (7): Proceedings . . . may be commenced, etc. The commencement of the proceedings is the date when the information is laid; see *Beardsley v. Giddings*, [1904] 1 K.B. 847, and *Brooks v. Bagshaw*, [1904] 2 K.B. 798; cf. also the Magistrates' Courts Act 1952, s. 104 (32 Halsbury's Statutes (2nd Edn.) 503). A prosecution for aiding and abetting falls within the time-limit just as do proceedings against a principal; see *Gould & Co. v. Houghton*, [1921] 1 K.B. 509.

Within twelve months. The normal time-limit is only six months; see the Magistrates' Courts Act 1952, s. 104 (32 Halsbury's Statutes (2nd Edn.) 503).

The day on which the offence was committed is not to be included in calculating the period of twelve months; see, in particular, *Goldsmiths' Co. v. West Metropolitan Rail. Co.*, [1904] 1 K.B. 1, C.A., and *Stewart v. Chapman*, [1951] 2 All E.R. 613; [1951] 2 K.B. 792.

Sub-s. (9). This subsection provides that regulations made under sub-s. (3) (b) may either extend or replace the requirements of s. 17, *ante*, relating to the safeguarding of dangerous parts of machinery. In the case of regulations made pursuant to s. 76 of the Factories Act 1961, the safety provisions of the Act relating to fencing have often been superseded (see *Miller v. William Boothman & Sons, Ltd.*, [1944] 1 All E.R. 333, C.A.; *Automatic Woodturning Co. v. Stringer*, [1957] 1 All E.R. 90, H.L.). In the case of the Factories Act 1961, the supersession of the Act by special regulations is discussed in the General Introduction to Redgrave's Factories Acts (20th Edn.) at pp. lxxxvii and lxxxviii.

Enforcement, etc. For provisions as to enforcement, see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "contravene", "contravention" and "the Minister", see s. 90 (1), *post*. See also as to "machinery, plant, equipment or appliances", s. 90 (2), *post*.

Regulations under this section. No regulations under this section had been made up to 14th October 1963.

For provisions as to regulations in general and special regulations in particular, see s. 80 and Sch. 1, *post*; and see also s. 90 (5), *post*.

21. Regulations for controlling noise and vibrations.—(1) The Minister may make special regulations for protecting persons employed to work in premises to which this Act applies, or any class of such premises,

from risks of bodily injury or injury to health arising from noise or vibrations and for preventing the welfare of persons so employed from being adversely affected by noise or vibrations.

(2) Regulations under this section may make any such provision for the purpose aforesaid as appears to the Minister to meet the necessity of the case so far as is reasonably practicable, and may impose obligations, restrictions and prohibitions on those who employ persons to work as aforesaid, on persons employed so to work, and on others.

(3) A person who contravenes a provision of regulations under this section shall be guilty of an offence.

NOTES

General effect of section. By sub-ss. (1) and (2) the Minister is empowered to make special regulations for protecting persons working in premises within the Act from the effects of noise and vibrations. Sub-s. (3) provides a sanction for contravention of the regulations.

Sub-s. (1): Special regulations. As to the making of special regulations, see s. 80 (8) and Sch. 1, *post*.

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Sub-s. (2): Appears. See the note to s. 20, *ante*.

Others. It should be noted that the regulations may impose obligations, restrictions and prohibitions on anyone at all, whether he be connected with premises within the Act or not.

Sub-s. (3): Offence. For further provisions, see ss. 64 *et seq.*, 70, 86 (1), *post*. See also ss. 68 and 69, *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Statutory nuisances. For noise and vibration as a statutory nuisance, see the Noise Abatement Act 1960, s. 1 (123 Statutes Supp. 76); and see the London County Council (General Powers) Act 1937, s. 66 (15 Halsbury's Statutes (2nd Edn.) 1063), as amended and extended. As from 1st April 1965, both these provisions are repealed by the London Government Act 1963, s. 93 (1), Sch. 18, Part II, and by s. 40 of that Act the Public Health Act 1936 is applied throughout the Greater London Area.

Definitions. For "contravene" and "the Minister", see s. 90 (1), *post*; for "employed", see s. 90 (1), (4), *post*. See also as to "... work in premises, etc.", s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80 and Sch. 1, *post*.

22. Power of magistrates' courts and sheriffs to make orders for putting down dangerous conditions and practices.—(1) Where, in the case of premises to which this Act applies, an appropriate court is satisfied, on a complaint (or, in Scotland, a summary application) made by or on behalf of an authority or person having power to enforce with respect to the premises any of the foregoing provisions of this Act—

- (a) that any part of the premises is in such a condition or is so constructed that it cannot be used without risk of bodily injury or injury to health; or
- (b) that any machinery, plant, equipment or appliance used in the premises is in such a condition, is so constructed or is so placed that it cannot be used without such risk; or
- (c) that an operation carried on in the premises, or a process used therein, is so carried on or used in such a manner as to cause such risk;

the following provisions shall have effect:—

- (i) if the case falls within paragraph (a) of this subsection, the court may by order prohibit the use of the part in question absolutely, unless it is satisfied that it can be so repaired or altered as to permit of its being used without such risk as aforesaid, in which case it may prohibit its use until it has been so repaired or altered;

- (ii) if the case falls within paragraph (b) of this subsection, the court may by order prohibit the use of the machinery, plant, equipment or appliance in question absolutely, unless it is satisfied that it can be so repaired, altered or moved as to permit of its being used as aforesaid, in which case it may prohibit its use until it has been so repaired, altered or moved;
 - (iii) if the case falls within paragraph (c) of this subsection, the court may by order prohibit the carrying on or use of the operation or process in question absolutely, unless it is satisfied that there can be taken such steps as will enable it to be carried on or used otherwise than in such a manner as to cause such risk as aforesaid, in which case it may, as the circumstances require, prohibit the carrying on or use of it until such steps as aforesaid have been taken or prohibit the carrying on or use of it unless such steps as aforesaid are taken in the course of the carrying on or use of it.
- (2) Where a complaint or summary application is, or has been, made under the foregoing subsection, the court—
- (a) if satisfied on evidence tendered upon an application made by or on behalf of the authority or person by whom or on whose behalf the complaint or summary application is, or was, made, that the use of the part of the premises or the thing, or, as the case may be, the carrying on or use of the operation or process, that is the subject of the complaint or summary application involves imminent risk of bodily injury or injury to health; and
 - (b) if satisfied also that three clear days' notice of intention to make an application under this subsection (stating the time at which it would be made) has been given to the occupier of the premises;

and after affording to the occupier (if he appears) an opportunity to be heard, may make an interim order prohibiting, either absolutely or subject to conditions, the use of the part or thing or, as the case may be, the carrying on or use of the operation or process until the earliest opportunity for hearing and determining the complaint or summary application.

(3) In this section "appropriate court" means, as regards premises in England or Wales, a magistrates' court acting for the petty sessions area in which the premises are situate and, as regards premises in Scotland, the sheriff within whose jurisdiction the premises are situate; and, in exercising its powers under the last foregoing subsection, a magistrates' court may be composed of a single justice.

NOTES

General effect of section. By sub-s. (1) magistrates' courts and (in Scotland) sheriffs are given power to make orders prohibiting the use of dangerous premises or plant and the carrying on of dangerous operations; and by sub-s. (2), where certain conditions are satisfied, the court or sheriff may make such orders on an interim basis until the matter can be heard on the merits. Sub-s. (3) specifies the type and composition of courts empowered to make such orders.

This section may be compared with the corresponding provisions as to factories contained in ss. 54 to 56 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 296 *et seq.* and Redgrave's Factories Acts (20th Edn.) pp. 141 *et seq.*).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Appropriate court. See sub-s. (3).

Complaint. For the procedure relating to the making and hearing of complaints see the Magistrates' Courts Act 1952, ss. 43 to 49 (125 Statutes Supp. 153-156).

Plant. In relation to the cognate provisions of the Factories Acts it has been held that the careless packing of goods on a proper trolley is not a defect in plant (*Corcoran v. East Surrey Ironworks Co.* (1888), 58 L.J. Q.B. 145). Unfenced machinery may be defective plant (*Iles v. Abercarn Welsh Flannel Co.* (1886), 2 T.L.R. 547, D.C.); but machinery properly constructed, but dangerous if improperly used, is not, and does not become so because a young and experienced workman is not instructed in its use, or warned of the danger (*Greenwood v. Greenwood*, [1907] 97 L.T. 771). See also *Watts v. Enfield Rolling Mills*, [1952] 1 All E.R. 1013, C.A., for a discussion of what may constitute plant.

Authority or person having power to enforce, etc. See ss. 52, 83 (5), *post*.

May . . . prohibit, etc. Disobedience to the order may be punished under the Magistrates' Courts Act 1952, s. 54 (3) (125 Statutes Supp. 158).

Order. For the right of appeal, see s. 72, *post*.

Sub-s. (2): Three clear days' notice of intention. In calculating the three days both the day of the notice and the day of the hearing are to be excluded; see, e.g., *R. v. Herefordshire J.J.* (1820), 3 B. & Ald. 581; and cf., e.g., *Thompson v. Stimpson*, [1960] 3 All E.R. 500; [1961] 1 Q.B. 195, C.A.

Occupier. This term is not defined. It seems clear, however, that the occupier within the meaning of the Act is the person who runs the premises in question and who regulates and controls the work that is done there; cf. *Ramsay v. Mackie* (1904), 7 F. (Ct. of Sess.) 106, at p. 109, *per* Lord Maclaren; *Smith v. Cammell Laird & Co., Ltd.*, [1939] 4 All E.R. 381; [1940] A.C. 242, at p. 384 and p. 250, respectively, *per* Viscount Maugham; and *Cox v. Cutler and Sons, Ltd. v. Hampton Court Gas Co.*, [1948] 2 All E.R. 665, C.A. Either person may be a limited company; cf., e.g., *Evans & Co., Ltd. v. London County Council*, [1914] 3 K.B. 315; [1914-15] All E.R. Rep. 663, and *Smith v. Cammell Laird & Co., Ltd.*, *supra*. He may be a receiver and manager appointed by a debenture holder; see *Meigh v. Wickenden*, [1942] 2 All E.R. 68; [1942] 2 K.B. 160. See also *Turner v. Courtaulds, Ltd.*, [1937] 1 All E.R. 467, and *Rippon v. Port of London Authority & Russell & Co.*, [1940] 1 All E.R. 637; [1940] 1 K.B. 858.

Make an interim order prohibiting, etc. See the note "May . . . prohibit, etc." above.

Common parts. For application of this section to common parts of buildings, part of which consists of premises to which this Act applies and to machinery, etc., used in such parts, see ss. 42 (1), (8), 43 (1), (6), *post*; and see also ss. 42 (9), 43 (7), *post*.

Definitions. For "magistrates' court", "notice" and "petty sessions area", see s. 90 (1), *post*. See also as to "machinery", "plant", etc., s. 90 (2), *post*; and note as to "appropriate court", sub-s. (3) of this section.

23. Prohibition of heavy work.—(1) No person shall, in the course of his work in premises to which this Act applies, be required to lift, carry or move a load so heavy as to be likely to cause injury to him.

(2) The Minister may make regulations prescribing the maximum weights which persons employed to work in premises to which this Act applies may lift, carry or move in the course of their work there; and any such regulations may relate either generally to such persons as aforesaid or to any class of such persons.

NOTES

General effect of section. By sub-s. (1) no person may be required to lift, carry or move a load so heavy as to be likely to cause injury to him, and by sub-s. (2) the Minister may make regulations prescribing the maximum weights which may be lifted, carried or moved.

This section may be compared with the corresponding provisions of s. 72 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 312 and Redgrave's Factories Acts (20th Edn.) pp. 189, 190).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*. See also as to " . . . work in premises", etc., s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*, and see also s. 90 (5), *post*.

24. First aid: general provisions.—(1) In the case of all premises to which this Act applies there shall be provided so as to be readily accessible a first-aid box complying with the requirements of the next following subsection or a first-aid cupboard so complying, and, where the number of persons employed to work in the premises exceeds one hundred and fifty at any one time, an additional such box or cupboard for each unit of one hundred and fifty persons comprised in the excess (any fraction of a unit being treated as one).

(2) The said requirements are that the box or cupboard—

(a) contains first-aid requisites and appliances of such descriptions and in such quantities as may be prescribed by order made by the Minister; and

(b) contains no articles other than first-aid requisites or appliances.

(3) A first-aid box or cupboard provided in the case of any premises in pursuance of the foregoing provisions of this section must be in the charge of a responsible person, and no box or cupboard so provided must be in the charge of a person who has charge of another box or cupboard provided in those premises in pursuance of the said provisions.

(4) Where persons to a number exceeding the relevant number are employed to work at any one time in premises to which this Act applies, then—

(a) if no more than one first-aid box or cupboard is required by this section to be provided in the case of the premises, the person in charge of it must be trained in first-aid treatment and always available during working hours;

(b) if two or more boxes or cupboards are so required to be so provided, one of the persons in charge of the respective boxes or cupboards must be so trained and available.

In this subsection "relevant number", in relation to any premises, means one hundred and fifty or such less number as may by regulations be prescribed by the Minister in relation either to premises generally or to premises of a class within which the first-mentioned premises fall.

(5) Where paragraph (a) of the last foregoing subsection applies to any premises, there must be displayed therein, at such place, in such a position, and in such characters, as to be easily seen and read by the persons employed to work in the premises, a notice stating the name of the person in charge of the box or cupboard and the fact of his being in charge of it; and where paragraph (b) of that subsection applies to any premises, there must be displayed therein, at such place, in such a position, and in such characters, as aforesaid, a notice stating—

(a) in a case where the availability of a single person is relied on to secure compliance with that paragraph, his name, the fact of his being in charge of a first-aid box or cupboard and that he is always available during working hours;

(b) in a case where the availability of one or other of two or more persons is so relied on, the names of each of them, the fact of their each being in charge of a first-aid box or cupboard, and that one or other of them is always so available.

(6) For the purposes of this section a person shall be deemed not to be trained in first-aid treatment unless he satisfies such conditions as may be prescribed by order made by the Minister.

(7) Where a first-aid room is maintained at, or in conjunction with, premises to which this Act applies, and arrangements exist for securing the immediate treatment in that room of persons who, while in the premises, suffer bodily injury or become ill, the authority having power to enforce compliance, in the case of those premises, with the foregoing provisions of this section, may by instrument in writing served on the occupier of the premises, exempt the premises, so long as the arrangements continue in force, from the requirements of the said provisions to such extent and subject to such conditions as may be specified in the instrument.

(8) Subsection (5) of this section shall not apply to fuel storage premises which are wholly in the open, but in the case of such premises which are wholly in the open there must be given to each person employed to work there a notice stating the like particulars as would be stated in such a notice as for the time being would, by virtue of that subsection, be required to be displayed in the premises if that subsection applied to them.

(9) This section shall not apply to premises which, for the purposes of the Mines and Quarries Act 1954, form part of a mine or quarry or which are comprised in an institution which provides medical or surgical treatment for in-patients or an institution which, not being such an one as aforesaid, is carried on by a person registered under Part VI of the Public Health Act 1936, the Nursing Homes Registration (Scotland) Act 1938 or Part XI of the Public Health (London) Act 1936.

NOTES

The words in italics in sub-s. (9) are repealed as from 1st April 1965 by the London Government Act 1963, s. 93 (1), Sch. 18, Part II.

General effect of section. Sub-s. (1) requires the provision of first-aid boxes or cupboards in premises within the Act, and sub-s. (2) provides that the Minister may prescribe their contents. By sub-s. (3) such boxes or cupboards must each be in the charge of a responsible person, who must in certain cases be trained and available during working hours (sub-s. (4)). Sub-s. (5) provides for the display of notices stating who is in charge of the box or cupboard and giving certain other information. Sub-s. (6) provides that a person is deemed not to be trained in first-aid unless he satisfies prescribed conditions. Sub-s. (7) enables premises having a first-aid room to be exempted from the foregoing provisions, and sub-ss. (8) and (9) provide exceptions in respect of open fuel storage premises, mines and quarries and hospitals and similar institutions.

This section may be compared with the corresponding provisions as to factories contained in s. 61 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 301 and Redgrave's Factories Acts (20th Edn.) pp. 150 *et seq.*).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Sub-s. (7): Authority having power to enforce compliance. See s. 52, *post*.

Served. For provisions as to serving documents, see s. 81, *post*.

Occupier. See the note to s. 22, *ante*.

Sub-s. (8): Fuel storage premises. For definition, see s. 3 (a) (iv), *ante*.

Given. For provisions as to giving notices, see s. 81 (2), *post*.

Crown. For the application of this section to the Crown, see s. 83 (2), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 69, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "fuel storage premises", see s. 1 (3) (a) (v), (5), *ante*; for "the Minister" and "notice", see s. 90 (1), *post*. See also as to "... work ...", s. 90 (3), *post*; and note as to "relevant number", sub-s. (4) of this section.

Mines and Quarries Act 1954. See 101 Statutes Supp. 27.

Public Health Act 1936, Part VI. See 19 Halsbury's Statutes (2nd Edn.) 425.

Nursing Homes Registration (Scotland) Act 1938. 1 & 2 Geo. 6 c. 73.

Public Health (London) Act 1936, Part XI. See 15 Halsbury's Statutes (2nd Edn.) 1004. As to that Part, see the first note, *supra*.

Order and regulations under this section. No order or regulations had been made under this section up to 14th October 1963.

For provisions as to orders and regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

25. First aid: premises inside, but for purposes of Factories Act 1961 not forming part of, factory.—(1) The Minister may by special regulations provide that premises to which this Act applies which are not, for the purposes of the Factories Act 1961, a factory but which, but for the operation of section 175 (6) of that Act, would, for the purposes of that Act, form part of a factory, or such premises as aforesaid of a class specified in the regulations,—

(a) shall be excepted from the operation of the last foregoing section; and

(b) shall, notwithstanding the said subsection (6), be deemed for the purposes of section 61 (first aid) of that Act to form part of the factory of which, but for that subsection, they would, for the purposes of that Act, form part.

(2) Regulations under this section may provide that, for the purposes of the application to a factory of subsection (4) of the said section 61 (which,

amongst other things, requires that the person under whose charge is placed a first-aid box or cupboard provided in a factory in pursuance of that section must, where more than fifty or other a lower prescribed number of persons are employed, be trained in first-aid treatment), persons employed to work in premises which, by virtue of the regulations, are deemed, for the purposes of that section, to form part of the factory shall (according as may be specified in the regulations) be left out of account or be taken into account to a number (ascertained in accordance with the regulations) less than the full number thereof.

NOTES

General effect of section. The Minister is given power to make special regulations providing that premises within the Act which are not a factory, but which would form part of a factory save for the operation of s. 175 (6) of the Factories Act 1961, should be excepted from the provisions of s. 24 of the present Act (which relate to first-aid) and should be deemed to be a factory for the purposes of the first-aid provisions of the Factories Act 1961.

Sub-s. (1): Special regulations. For provisions as to special regulations, see s. 80 (8) and Sch. 1, *post*.

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Factory. The definition of a factory for the purposes of the Factories Act 1961 is contained in s. 175 of that Act, and has been the subject of extensive judicial interpretation. See 41 Halsbury's Statutes (2nd Edn.) 402 and Redgrave's Factories Acts (20th Edn.) pp. 398 *et seq*.

But for the operation of s. 175 (6). That subsection provides that where a place situate within the close, curtilage, or precincts forming a factory is solely used for some purpose other than the processes carried on in the factory, that place is not to be deemed to form part of the factory for the purposes of that Act, but is, if otherwise it would be a factory, to be deemed to be a separate factory.

For the judicial interpretation of this subsection, see Redgrave's Factories Acts (20th Edn.) pp. 415, 416.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*. See also as to "... work in premises", etc., s. 90 (3), *post*.

Factories Act 1961. See 41 Halsbury's Statutes (2nd Edn.) 239. For ss. 61 and 175 (6) of that Act, see 41 Halsbury's Statutes (2nd Edn.) 301, 403.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

26. First aid: office premises erected for purposes of building operations, &c.—(1) This section applies to office premises to which this Act applies, being premises erected—

(a) at, or adjacent to, a place where there are carried on operations to which section 127(1) (building operations and works of engineering construction) of the Factories Act 1961 applies or works to which that section applies; and

(b) for the purpose of, or in connection with, the operations or works.

(2) The Minister may by special regulations provide that premises to which this section applies, or such premises as aforesaid of a class specified in the regulations,—

(a) shall be excepted from the operation of section 24 of this Act; and

(b) shall be deemed, for the purposes of any regulation as to first aid made by virtue of section 127 (2) of the said Act of 1961 which is applicable to the place where there are carried on the operations or works for the purpose of which, or in connection with which, the premises were erected, to form part of that place.

NOTES

General effect of section. The Minister may by special regulations except from the provisions of s. 24, *ante* (which relate to first-aid) office premises which are erected for the purpose of building operations and works of engineering construction and may apply to them instead regulations as to first-aid made under s. 127 (2) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 366 and Redgrave's Factories Acts (20th Edn.) p. 332).

Sub-s. (1): Office premises. See ss. 1 to 3, *ante*.

Adjacent. This expression has in ordinary usage no precise and uniform meaning, but is not confined to places adjoining and includes places close to or near; see *Wellington Corpn. v. Lower Hutt Corpn.*, [1904] A.C. 773, P.C.; and cf. *Re Ecclesiastical Comrs. for England's Conveyance*, [1936] Ch. 430; [1934] All E.R. Rep. 118, at p. 441 and p. 123, respectively.

Operations to which section 127 (1) . . . applies. This section applies—

“(a) to building operations; and

(b) to works of engineering construction; undertaken by way of trade or business, or for the purpose of any industrial or commercial undertaking, and to any line or siding which is used in connection therewith and for the purposes thereof and is not part of a railway or tramway.”

Sub-s. (2): Special regulations. For provisions as to special regulations, see s. 80 (8) and Sch. 1, *post*.

Definitions. For “the Minister”, see s. 90 (1), *post*; for “office premises”, see s. 1 (2), (5), *ante*.

Factories Act 1961, s. 127. See 41 Halsbury's Statutes (2nd Edn.) 365.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

27. Penalization of dangerous acts and interference with equipment, &c.—(1) A person who, in premises to which this Act applies, wilfully and without reasonable cause does anything likely to endanger the health or safety of persons employed to work therein shall be guilty of an offence.

(2) A person who, in premises to which this Act applies, wilfully interferes with, wilfully misuses or without reasonable excuse removes any equipment, appliance, facilities or other thing provided there in pursuance of this Act or regulations thereunder shall be guilty of an offence.

(3) Nothing in this section shall be taken as limiting the power conferred by section 20 or 21 of this Act to make by regulations any such provision as is mentioned in, as the case may be, the one section or the other, including further provision as to matters which are the subject of this section.

NOTES

General effect of section. Sub-s. (1) makes it an offence so to act as to endanger the health or safety of persons working in premises within the Act. By sub-s. (2), interference with equipment, etc., is made an offence; sub-s. (3) makes it clear that ss. 20 and 21 (which empower the making of special regulations to secure health and safety and to control noise and vibrations) are not limited by this section.

The obligations created by this section may be compared with those imposed upon persons employed in factories by s. 143 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 380 and Redgrave's Factories Acts (20th Edn.) pp. 361 *et seq.*).

In civil proceedings, contributory negligence is a defence, in whole or in part, to an action for breach of statutory duty (*Caswell v. Powell Duffryn Associated Collieries, Ltd.*, [1939] 3 All E.R. 722). Voluntary assumption of risk affords, however, no such defence (*Wheeler v. New Merton Board Mills, Ltd.*, [1933] 2 K.B. 669, C.A.). For a discussion of the general principles relating to contributory negligence, see 28 Halsbury's Laws (3rd Edn.) pp. 87 *et seq.*, and (as between master and servant) 25 Halsbury's Laws (3rd Edn.) pp. 515, 516. Where the employer's breach of statutory duty consists of, and is co-extensive with, the wrongful act of his employee, and the employee sues in respect of injuries caused by the breach, the employee will normally be held wholly to blame; but if there is some fault on the part of the employer which goes beyond or is independent of the wrongful act of the employee, and was a cause of the injury, the employer has some liability (*Ginty v. Belmont Building Supplies, Ltd.*, [1959] 1 All E.R. 414, approved in *McMath v. Rimmer Bros. (Liverpool), Ltd.*, [1961] 3 All E.R. 1154, C.A.). Once the employee has proved a breach of the statute the onus is on the employer to prove that the employee's fault was co-extensive with the breach (*Boden v. Moore* (1961), 105 Sol. Jo. 510, C.A.).

Sub-s. (1): A person. It will be noted that the obligation imposed by the subsection is not confined to persons working or employed upon the premises.

Premises to which this Act applies. See the note to s. 4, *ante*.

Wilfully and without reasonable cause. The meaning of this adverbial phrase, as found in s. 143 (2) of the Factories Act 1961, was discussed by Hilberry, J., in *Charles v. S. Smith & Sons, Ltd.*, [1954] 1 All E.R. 499. He held that since the workman in that case did not foresee, and was not negligent in not foreseeing, that his act might endanger him, he had not “wilfully and without reasonable cause” done anything to endanger himself. Hilberry, J., did not state affirmatively, however, that negligent and percipient conduct by a person would suffice to constitute wilfulness, and it is submit-

ted that the use of the word "wilfully" in s. 27 (1) of the present Act connotes perversity of conduct, just as does its use in s. 27 (2) (see below). It has been said that a person acts in contravention of s. 143 (2) of the Factories Act 1961, when he takes a wilful risk, knowing that he is acting in breach of instructions and regulations (*Ginty v. Belmont Building Supplies, Ltd.*, [1959] 1 All E.R. 414), although knowledge that he is acting unlawfully is not, it would seem, an essential ingredient of his liability (*Norris v. Syndi Manufacturing Co., Ltd.*, [1952] 1 All E.R. 935, C.A., at p. 939, *per* Denning, L.J.).

Persons employed. Although the subsection does not in terms state that it is an offence for a person wilfully and without reasonable cause to do anything likely to endanger himself (compare s. 143 (2) of the Factories Act 1961) it is submitted that where such a person is a person employed the effect of the subsection is to prohibit his so acting.

Offence. For further provisions, see ss. 64 *et seq.*, 70, *post*.

Sub-s. (2): A person. See the note to sub-s. (1), *supra*.

Wilfully interferes with . . . misuses. The corresponding terminology of s. 143 (1) of the Factories Act 1961 is "wilfully interfere with or misuse". These words have been held to require something in the nature of a perverse intermeddling with the appliance. An intentional touching or misplacement is not sufficient if it does not include this element of perversity (*Charles v. S. Smith & Sons, Ltd.*, [1954] 1 All E.R. 499). It is to be noted that in this case Hilberry, J. (at p. 502), treated the word "or" as conjunctive, and not as disjunctive, in meaning, so that for there to be "wilful interference" there had to be something which was also in the nature of a "misuse". The different wording of s. 27 (2) of the present Act makes it clear that there can here be wilful interference without the element of misuse, and it may be that wilful interference *simpliciter* does not require such perversity of conduct as is referred to in *Charles v. S. Smith & Sons, Ltd.*, *supra*.

Without reasonable excuse removes. It is to be noted that removal without reasonable excuse is an offence, even if the removal is not wilful.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*. See also as to ". . . work therein", s. 90 (3), *post*.

Fire Precautions

28. Provision of means of escape in case of fire.—(1) All premises to which this Act applies shall be provided with such means of escape in case of fire for the persons employed to work therein as may reasonably be required in the circumstances of the case.

(2) In determining, for the purposes of this section, what means of escape may reasonably be required in the case of any premises, regard shall be had (amongst other things) not only to the number of persons who may be expected to be working in the premises at any time but also to the number of persons (other than those employed to work therein) who may reasonably be expected to be resorting to the premises at that time.

NOTES

General effect of section. All premises within the Act must be provided with such means of escape in case of fire as may reasonably be required, regard being had (amongst other things) to the number of persons who may be expected to work in or resort to the premises.

Sections 28 to 41 of the Act contain provisions relating to fire precautions. The provisions of the Factories Act 1961, relating to fire precautions are contained in ss. 40 to 52 thereof (41 Halsbury's Statutes (2nd Edn.) 284 *et seq.* and Redgrave's Factories Acts (20th Edn.) pp. 125 *et seq.*).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*. Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Sub-s. (2): In determining, etc. This subsection is applied by s. 29 (11), *post*.

Common parts. For the application of this section to common parts of buildings, part of which consists of premises to which this Act applies, see ss. 42 (1), (11), 43 (1), (9), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*. See also as to ". . . work therein", s. 90 (3), *post*.

29. Certification of premises by appropriate authority.—(1) Subject to the provisions of subsection (8) of this section and of regulations made under subsection (9) thereof and to the following provisions of this Act, it shall not be lawful—

- (a) for more than twenty persons to be employed to work at any one time in any premises to which this Act applies;
- (b) for more than ten persons to be so employed elsewhere than on the ground floor of any such premises; or
- (c) for any person to be employed to work in any such premises in or underneath which explosive or highly flammable materials of a kind prescribed by regulations made by the Minister are used or are stored in a quantity not less than such as may be so prescribed;

unless there is in force with respect to the premises a certificate (hereinafter in this Act referred to as a “fire certificate”) issued under the following provisions of this section by the appropriate authority (as hereafter in this Act defined) that the premises are provided with such means of escape in case of fire for the persons employed to work therein, or proposed to be so employed, as may reasonably be required in the circumstances of the case, nor, where a building contains two sets or more of premises to which this Act applies, shall the employment of a person to work in either (or any) of them be lawful without a fire certificate’s being in force with respect to the set in which he is so employed if—

- (i) the aggregate of persons employed to work at any one time in both (or all) of the sets of premises exceeds twenty; or
- (ii) more than ten persons are employed at any one time to work in one of them elsewhere than on the ground floor of the building, or, of the aggregate of the persons employed to work at any one time in both (or all) of them, more than ten are employed to work at that time elsewhere than as aforesaid.

(2) An application for the issue of a fire certificate with respect to any premises must be made to the appropriate authority in such form as may be prescribed by order made by the Minister and state the greatest number of persons employed to work at any one time in the premises or proposed to be so employed and such other (if any) particulars as may be so prescribed, and, if regulations made by the Minister so require, must be accompanied by such plans of the premises as may be specified in the regulations.

(3) Where such an application is duly made with respect to any premises, and (if that is required by virtue of the last foregoing subsection) is accompanied by the specified plans, it shall be the duty of the appropriate authority to cause an inspection to be carried out of the premises and the means of escape therefrom in case of fire for the persons employed to work therein, or proposed to be so employed, with which the premises are provided and, if satisfied that the means with which the premises are provided are such as may reasonably be required in the circumstances of the case, to issue a certificate to that effect.

(4) Where the appropriate authority, after causing, in pursuance of the last foregoing subsection, an inspection to be carried out of any premises, inform the applicant that they will not issue a fire certificate with respect to the premises unless specified alterations are made thereto, they shall specify the time within which the alterations are to be carried out and, if the certificate is not issued, it shall be deemed to have been refused at the expiration of the time so specified or such further time as the authority may have allowed.

(5) A fire certificate issued with respect to any premises shall—

- (a) specify the greatest number of persons who, in the opinion of the appropriate authority, can safely be employed to work at any one time in the premises;

- (b) specify precisely and in detail the means of escape provided and state which of them are to be treated as relevant for the purposes of the following provisions of this Act relating to the marking of exits affording or giving access to means of escape;
- (c) if the appropriate authority be of opinion that there inhere in the premises special risks of the outbreak or spread of fire, state that the authority are of that opinion and specify those risks;

and shall be sent to the occupier of the premises.

(6) A fire certificate issued with respect to any premises shall be kept there so long as it is in force.

(7) If any persons are employed to work in any premises in contravention of subsection (1) of this section, the occupier of the premises shall be guilty of an offence and liable to a fine not exceeding two hundred pounds or, on a second or subsequent conviction, not exceeding five hundred pounds.

(8) Subsection (1) of this section shall not render unlawful the employment of persons to work in any premises during the period beginning with the day on which an application (accompanied, if that is required by virtue of subsection (2) of this section, by the specified plans of the premises) for the issue of a fire certificate with respect to the premises is duly made to the appropriate authority and ending with the day on which, as the case may be, a fire certificate is issued pursuant to that application or the issue of a fire certificate pursuant thereto is refused.

(9) The Minister may by special regulations so modify subsection (1) of this section that it renders unlawful the employment of persons to work in premises of a class specified in the regulations whose employment to work there would not otherwise be unlawful by virtue of that subsection or so modify that subsection that it ceases to render unlawful the employment of persons to work in premises of a class so specified whose employment to work there would otherwise be unlawful by virtue of that subsection.

(10) Where, after the coming into operation of building standards regulations within the meaning of the Building (Scotland) Act 1959, the appropriate authority are satisfied that premises in Scotland to which the said regulations apply comply with those regulations with respect to the structural requirements of the means of escape from fire, they shall not for the purposes of this or the next following section specify any alterations in respect of those premises to a standard higher than that of the said requirements.

(11) Subsection (2) of the last foregoing section shall have effect for the purposes of this section as it has effect for the purposes of that.

NOTES

General effect of section. Sub-s. (1) provides that, with exceptions, it is not lawful for persons to be employed in certain specified circumstances without there being in force a fire certificate in respect of the premises concerned. Sub-ss. (2) to (4) prescribe the procedure to be followed in the issue of a fire certificate, and sub-ss. (5) and (6) specify the contents of such a certificate and require that it be kept on the premises. Sub-s. (7) makes it an offence on the part of the occupier of premises if persons are employed there in contravention of sub-s. (1). Sub-s. (8) excepts from sub-s. (1) the employment of persons while an application for a fire certificate is pending, and sub-s. (9) provides for the modification of sub-s. (1) by special regulations. Sub-s. (10) contains special provisions relating to premises in Scotland, and sub-s. (11) applies s. 28 (2) to the present section.

This section may be compared with the provisions relating to fire certificates in factories contained in ss. 40 and 45 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 284, 289 and Redgrave's Factories Acts (20th Edn.) pp. 125 *et seq.*, 132, 133).

Sub-s. (1): Subject to . . . the following provisions of this Act. See as to the employment of persons pending the determination of an appeal against the refusal or cancellation of a fire certificate, s. 31 (2), *post*.

Premises to which this Act applies. See ss. 1 to 3, *ante*. Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Appropriate authority. See s. 39, *post*.

Such means of escape . . . as may reasonably be required. The provisions of s. 28 (2) apply in determining what may reasonably be required; see sub-s. (11) of this section.

Sub-s. (3): It shall be the duty, etc. Cf. the note to s. 52, *post*.

For provisions as to appeal against the refusal of a fire certificate, see s. 31, *post*.

Sub-s. (4): Where the appropriate authority, etc. Sub-s. (4) of this section must be read in conjunction with s. 41, *post*, as to consultation in certain cases.

Sub-s. (5): Following provisions . . . relating to the marking of exits, etc. See s. 33 (3), *post*.

Shall be sent. For provisions as to the sending of documents, see s. 81, *post*.

Sub-s. (7): Occupier. It is to be noted that it is the occupier of the premises against whom the sanction lies. Where the employer is not the occupier, and a contravention of sub-s. (1) occurs due to the employer's act or default, he may nonetheless be convicted of an offence; see s. 66, *post*.

Second or subsequent conviction. A second or subsequent offence is an offence committed after the first conviction; see *R. v. South Shields Licensing Justices*, [1911] 2 K.B. 1. See, however, as to offences for which an order is made under the Criminal Justice Act 1948, placing the offender on probation or discharging him absolutely or conditionally, s. 12 (1) of that Act (28 Halsbury's Statutes (2nd Edn.) 363); and cf. as to the case where that subsection, under the proviso thereto, ceases to apply to the conviction, *R. v. Perfect*, [1957] 2 All E.R. 250; [1957] 1 Q.B. 107.

Sub-s. (8): Beginning. Cf. the note to s. 5, *ante*.

Sub-s. (9): Special regulations. As to special regulations, see s. 80 (8) and Sch. 1, *post*.

Common parts. For the application of this section to common parts of buildings part of which consists of premises to which this Act applies, see ss. 42 (1), (11), (12), 43 (1), (9), (10), *post*.

Crown. For the application of this section to the Crown, see s. 83 (3), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86, *post*; and note sub-s. (7) of this section.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Related amendments. For amendments of the Public Health Act 1936, ss. 59, 60 (19 Halsbury's Statutes (2nd Edn.) 355, 357), etc., see s. 76, *post*.

Definitions. For "building", "contravention" and "the Minister", see s. 90 (1), *post*; for "employed", see s. 90 (1), (4), *post*. See also as to "work . . . premises", etc., s. 90 (3), *post*; and note as to "fire certificate", sub-s. (1) of this section.

Regulations and order under this section. No regulations or order had been made under this section up to 14th October 1963.

For provisions as to regulations in general and orders and special provisions in particular, see s. 80 and Sch. 1, *post*; and see also s. 90 (5), *post*.

30. Maintenance of means of escape in case of fire, and inspection by appropriate authority.—(1) All means of escape specified in a fire certificate shall be properly maintained and kept free from obstruction.

(2) So long as a fire certificate is in force with respect to any premises, the appropriate authority may at any time cause the premises to be inspected for the purpose of ascertaining whether there has been a change of conditions by reason of which the existing means of escape in case of fire have become insufficient.

(3) If, while a fire certificate is in force with respect to any premises, it is proposed to make a material extension to, or material structural alteration of, the premises, to increase the number of persons employed to work therein at any one time above that stated in the certificate, to begin to use therein materials of a kind prescribed by virtue of section 29 (1) (c) of this Act or to begin to store therein such materials in a quantity not less than that so prescribed, the occupier shall, before effect is begun to be given to the proposals, give to the appropriate authority notice of the proposals.

(4) If—

(a) the appropriate authority are satisfied, with respect to any premises with respect to which a fire certificate is in force (whether as a result of an inspection caused by them to be carried out under subsection (2) of this section or otherwise), that the existing

means of escape from the premises in case of fire have, in consequence of a change of conditions, become insufficient; or

- (b) the appropriate authority are satisfied, with respect to any premises with respect to which a notice under the last foregoing subsection has been given to them, that the giving of effect to the proposals notified will result in the means of escape from the premises in case of fire becoming insufficient;

they may, in a case falling within paragraph (a) above, by notice served on the occupier of the premises, require him to make to the premises, within such period as may be specified in the notice, such alterations as may be so specified, or, in a case falling within paragraph (b) above, by notice so served prohibit effect's being given to the proposals till the occupier shall have made to the premises such alterations as may be so specified, and, in either case, they shall, upon the alterations' being made, amend the certificate or issue a new one.

(5) In the event of a contravention of a requirement or prohibition imposed by a notice served under the last foregoing subsection with respect to any premises, the occupier of the premises shall be guilty of an offence, and upon his conviction thereof the appropriate authority shall cancel the fire certificate issued with respect to the premises; and the appropriate authority may cancel the fire certificate issued with respect to any premises if they are satisfied that there has been such a contravention as aforesaid with respect to the premises (whether or not proceedings are brought in respect of the contravention).

(6) Where the appropriate authority are satisfied, with respect to any premises with respect to which a notice under subsection (3) of this section has been given to them, that the giving of effect to the proposals notified will not result in the means of escape from the premises in case of fire becoming insufficient, they shall, upon production of the fire certificate in force with respect to the premises, cause to be written on the certificate a statement that they are so satisfied.

NOTES

General effect of section. Sub-s. (1) provides that means of escape specified in a fire certificate shall be properly maintained and kept free from obstruction. Sub-s. (2) empowers the appropriate authority to inspect premises where there is a fire certificate in force. By sub-s. (3), where certain alterations are proposed to premises or their use the occupier must give notice to the appropriate authority; and by sub-s. (4), where the appropriate authority are satisfied that existing means of escape have or will become insufficient, they may require alterations to be made or prohibit effect being given to proposals for alteration or change of use until alterations are made. Contravention of such a requirement or prohibition is an offence and renders the fire certificate liable to cancellation (sub-s. (5)). Where the appropriate authority are satisfied that proposals under sub-s. (3) will not result in insufficient means of escape they must so endorse the fire certificate (sub-s. (6)).

This section may be compared with the provisions of s. 41 (1) to (4) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 286 and Redgrave's Factories Acts (20th Edn.) pp. 128 *et seq.*).

Nothing in s. 30 applies to open fuel storage premises; see s. 40, *post*.

Sub-s. (2): Fire certificate. See s. 29, *ante*.

Appropriate authority. See s. 39, *post*.

Sub-s. (3): Occupier. See the note to s. 22, *ante*.

Notice. For the service of notices, see s. 81, *post*.

Sub-s. (4): If . . . satisfied, etc. Sub-s. (4) of this section must be read in conjunction with s. 41, *post*, as to consultation in certain cases.

Notice. For the service of notices, see s. 81, *post*. As to the duty to consult with the local authority, see s. 41, *post*.

Served. For provisions as to the service of certificates, see s. 81, *post*.

Occupier. See the note to s. 22, *ante*.

Alterations. The power to specify alterations in respect of premises in Scotland is subject to the provisions of s. 29 (10), *ante*.

Sub-s. (5): In the event, etc. Sub-s. (5) of this section is applied by s. 35 (2), *post*, where a notice is issued under that subsection.

Sub-s. (6): Shall . . . cause to be written, etc. Cf. the note "It shall be the duty, etc." to s. 52, *post*.

Common parts. For the application of this section to common parts of buildings part of which consists of premises to which this Act applies, see ss. 42 (1), (11), 43 (1), (9), *post*; and see also ss. 42 (15), (16), 43 (13), (14), *post*.

Crown. For the application of this section to the Crown, see s. 83 (3), *post*.

Appeals. For provisions as to appeal against matters arising out of this section, see s. 31, *infra*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86, *post*; and see as to common parts, ss. 42 (13), 43 (11), *post*, and note sub-s. (5) of this section.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "contravention" and "notice", see s. 90 (1), *post*; for "employed", see s. 90 (1), (4), *post*; for "fire certificate", see s. 29 (1), *ante*. See also as to ". . . work therein", s. 90 (3), *post*.

31. Right of appeal against matters arising out of sections 29 and 30.—(1) A person who is aggrieved—

- (a) by the refusal of the appropriate authority to issue a fire certificate with respect to any premises;
- (b) by the refusal of the appropriate authority to amend a fire certificate issued with respect to any premises;
- (c) by being required under the last foregoing section by the appropriate authority to make any alterations to any premises or by the period within which he is so required to make any such alterations;
- (d) by the prohibition under the last foregoing section by the appropriate authority of effect's being given to proposals till alterations shall have been made to any premises; or
- (e) by the cancellation, in pursuance of subsection (5) of the last foregoing section, of a fire certificate issued with respect to any premises;

may, within twenty-one days of the refusal, notice of requirement or prohibition or cancellation, appeal, if the premises are situate in England or Wales, to a magistrates' court acting for the petty sessions area in which they are situate or, if they are situate in Scotland, to the sheriff within whose jurisdiction they are situate, and on any such appeal the court may make such order as it, or, as the case may be, the sheriff may make such order as he, thinks fit, and an order so made shall be binding on the appropriate authority.

(2) Where an appeal is brought under this section against the refusal of the appropriate authority to issue a fire certificate with respect to any premises or the cancellation in pursuance of subsection (5) of the last foregoing section of a fire certificate issued with respect to any premises, section 29 (1) of this Act shall not render unlawful the employment of persons to work in the premises until the appeal is finally determined.

NOTES

General effect of section. Sub-s. (1) provides to aggrieved persons a right to appeal against matters arising out of ss. 29 and 30. Sub-s. (2) provides that in certain cases during the pendency of an appeal s. 29 (1) shall not render unlawful the employment of persons in the premises.

This section may be compared with the corresponding provisions of s. 43 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 288 and Redgrave's Factories Acts (20th Edn.) p. 131).

Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Sub-s. (1): Person . . . aggrieved. See as to the meaning of this expression, in particular, *Re Sidebotham, Ex parte Sidebotham* (1880), 14 Ch.D. 458, C.A., at p. 465, *per James, L.J.*; *Re, Reed, Bowen & Co., Ex parte Official Receiver* (1887), 19 Q.B.D. 174, C.A., at pp. 177, 178, *per Lord Esher, M.R.*; *Sevenoaks Urban District Council v. Twynam*, [1929] 2 K.B. 440, *per Lord Hewart, C.J.*; *R. v. Nottingham Quarter Sessions, Ex parte Harlow*, [1952] 2 All E.R. 78; [1952] 2 Q.B. 601; *Ealing Borough Council v. Jones*, [1959] 1 All E.R. 286; [1959] 1 Q.B. 384; *Buxton v. Minister of Housing and Local Government*, [1960] 3 All E.R. 408; [1961] 1 Q.B. 278; and *Attorney-General of the Gambia v. N'Jie*, [1961] 2 All E.R. 504; [1961] A.C. 617, P.C.

Refusal. The time runs from the date of the refusal, not from the date when the aggrieved person has notice of the refusal. As to the time of refusal when the authority require alterations under s. 29 (4), see that subsection.

Appropriate authority. See s. 39, *post*.

Within twenty-one days. Cf. the second paragraph of the note "Within twelve months" to s. 20, *ante*.

Appeal. The appeal is by way of complaint for an order; see the Magistrates' Courts Rules 1952 (S.I. 1952 No. 2190), r. 30; 13 Halsbury's Statutory Instruments' title Magistrates, Part I. See also the note "Complaint" to s. 22, *ante*.

Quaere whether a further appeal lies to a court of quarter sessions under s. 72, *post*. See also as to suspension or rescission of the order on further complaint, the Magistrates' Courts Act 1952, s. 54 (2) (125 Statutes Supp. 158).

May make such order, etc. *Quaere* whether disobedience to the order may be punished under the Magistrates' Courts Act 1952, s. 54 (3) (125 Statutes Supp. 158). Cf. also the note "It shall be the duty, etc." to s. 52, *post*.

Factories, etc. See the note to s. 4, *ante*.

Notices under s. 35 (2). This section is applied by s. 35 (2), *post*, where a notice is issued under that subsection.

Definitions. For "fire certificate", see s. 29 (1), *ante*; for "magistrates' court" and "petty sessions area", see s. 90 (1), *post*.

32. Power of magistrates' courts and sheriffs to make orders for putting down dangerous conditions in regard to means of escape in case of fire.—If the appropriate authority are satisfied that the conditions in regard to escape in the case of fire in the case of any premises to which this Act applies are so dangerous that, until steps have been taken to remedy the danger, persons ought not (according to the circumstances of the case)—

- (a) to be employed to work in the premises or in a particular part thereof,
or
- (b) to be employed to work in connection with the carrying on in the premises or in a particular part thereof of some particular process,
or
- (c) to be employed to do in the premises or in a particular part thereof some particular work;

the authority may, if the premises are situate in England or Wales, make a complaint to a magistrates' court acting for the petty sessions area in which the premises are situate or, if they are situate in Scotland, make a summary application to the sheriff within whose jurisdiction they are situate, and the court or, as the case may be, the sheriff, on being similarly satisfied, may by order prohibit, to the extent appropriate in the said circumstances, the employment of persons to work in the premises until such steps shall have been taken as, in the opinion of the court or, as the case may be, the sheriff, are necessary to remedy the danger.

NOTES

General effect of section. If the appropriate authority are satisfied that means of escape in case of fire are dangerous, they may make a complaint to a magistrates' court or a summary application to the sheriff, whereupon the court or the sheriff may prohibit the employment of persons to work in the premises until the danger is remedied.

This section may be compared with the corresponding provisions of s. 41 (7) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 286 and Redgrave's Factories Acts (20th Edn.) pp. 129, 130).

Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Sub-s. (1): Appropriate authority. See s. 39, *post*.

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Complaint. For provisions as to jurisdiction and procedure, see the Magistrates' Courts Act 1952, ss. 43 *et seq.* (125 Statutes Supp. 153 *et seq.*).

Although this section does not say so, it seems clear that the defendant to the complaint is to be the occupier of the premises, as to whom, see the note "Occupier" to s. 22, *ante*.

An appeal to quarter sessions lies from the decision on the complaint under s. 72, *post*. See also as to suspension or rescission of the order on further complaint, the Magistrates' Courts Act 1952, s. 54 (2) (125 Statutes Supp. 158).

May . . . prohibit, etc. See the note to s. 22, *ante*.

Common parts. For the application of this section to common parts of buildings part of which consists of premises to which this Act applies, see ss. 42 (1), (11), 43 (1), (9), *post*.

Crown. For the application of this section to the Crown, see s. 83 (3), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "magistrates' court" and "petty sessions area", see s. 90 (1), *post*. See also as to the references to persons employed to work in premises, s. 90 (3), *post*.

33. Safety provisions in case of fire.—(1) While a person employed to work in premises to which this Act applies is in the premises for the purpose of doing his work or eating a meal, the doors of any doorways through which he might have to pass so as to get out of the premises shall not be so locked or fastened that they cannot be immediately opened by him on his way out.

(2) The contents of any room in premises to which this Act applies, being a room wherein work is done by any of the persons employed to work in the premises, shall be so arranged or disposed as to afford, to the persons who work in the room, free passage-way to a means of escape in case of fire.

(3) So long as a fire certificate with respect to any premises is in force, all exits affording, or giving access to, means of escape stated in the certificate to be relevant as mentioned in section 29 (5) (b) of this Act (other than exits in ordinary use) shall be distinctively and conspicuously marked by notices printed in letters of adequate size.

NOTES

General effect of section. Sub-s. (1) provides that where an employed person is in the premises, doors affording egress must not be fastened. By sub-s. (2), the contents of workrooms must be so arranged as to afford free passage-way to a means of escape in case of fire, and sub-s. (3) provides for the marking of exits.

This section may be compared with the corresponding provisions of s. 48 (1), (6) and (10) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 292, 293 and Redgrave's Factories Acts (20th Edn.) pp. 136 *et seq.*).

Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Sub-s. (3): Fire certificate. See s. 29, *ante*.

Common parts. For the application of this section to common parts of buildings part of which consists of premises to which this Act applies, see ss. 42 (1), (11), 43 (1), (9), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 69, 70, 86 (1), *post*; and see as to common parts, ss. 42 (13), 43 (11), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "fire certificate", see s. 29 (1), *post*. See also as to "... work ...", s. 90 (3), *post*.

34. Fire alarms.—(1) All premises to which this section applies shall be provided with effective means, capable of being operated without exposing any person to undue risk, of giving warning in case of fire.

(2) All means of giving warning in case of fire with which any premises are provided in pursuance of this section shall be tested or examined at least once in every period of three months and whenever so required by the appropriate authority.

(3) The Minister may by regulations prescribe the nature of the test or examination to be carried out in pursuance of the last foregoing subsection.

(4) This section applies to any premises with respect to which a fire certificate is in force and any premises in the case of which persons are for the time being employed to work therein, being persons whose employment so to work would, apart from section 29 (8) or 31 (2) of this Act, be unlawful by virtue of section 29 (1) thereof.

NOTES

General effect of section. Sub-ss. (1) and (4) require the provision of fire alarms in premises having a fire certificate and in certain other premises. By sub-ss. (2) and (3) the fire alarms must be tested every three months or whenever so required by the appropriate authority, and the Minister may prescribe the nature of that test.

This section may be compared with the corresponding provisions of s. 48 (7) and s. 52 (1), (3) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 293, 295 and Redgrave's Factories Acts (20th Edn.) pp. 137, 140).

Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Sub-s. (1): Premises to which this section applies. See sub-s. (4).

Sub-s. (2): Appropriate authority. See s. 39, *post*.

Sub-s. (4): Fire certificate. See s. 29, *ante*.

Common parts. For the application of this section to common parts of buildings part of which consists of premises to which this Act applies, see ss. 42 (1), (11), (14), 43 (1), (9), (12), *post*; and see also ss. 42 (15), 43 (13), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "fire certificate", see s. 29 (1), *ante*; for "the Minister", see s. 90 (1), *post*. See also, as to "... work therein", s. 90 (3), *post*.

Regulations under this section. No regulations under this section had been made up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*.

35. Power of Minister to make regulations with respect to means of escape in case of fire.—(1) The Minister may make, as respects premises to which this Act applies, or any specified class of such premises, regulations as to the means of escape in case of fire to be provided therein, but nothing in regulations under this subsection shall be construed as being in derogation of the general obligation imposed by section 28 of this Act.

(2) If any premises with respect to which a fire certificate is in force are not in conformity with regulations under this section applicable to the premises, the appropriate authority shall serve on the occupier of the premises notice requiring him to make to the premises, within such period as may be specified in the notice, such alterations as they consider necessary to bring the premises into conformity with the regulations, and, upon the alterations' being made, they shall amend the certificate or issue a new one.

Sections 30 (5) and 31 of this Act shall have effect in a case in which a notice is issued under this subsection with respect to any premises as they have effect in a case in which a notice is issued under section 30 (4) of this Act requiring alterations to be made to premises.

NOTES

General effect of section. By sub-s. (1) the Minister may make regulations as to the means of escape in case of fire to be provided in premises within the Act. By sub-s. (2) the appropriate authority must serve a notice upon the occupier of premises having a fire certificate which do not conform with the regulations, requiring him to alter them so as to conform therewith.

This section may be compared with the corresponding provisions of s. 46 (1) and (3) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 290 and Redgrave's Factories Acts (20th Edn.) pp. 133, 134).

Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Sub-s. (2): Fire certificate. See s. 29, *ante*.

Serve ... notice. See s. 81, *post*. As to the duty to consult with the local authority, see s. 41, *post*.

Occupier. See the note to s. 22, *ante*.

Common parts. For the application of this section to common parts of buildings part of which consists of premises to which this Act applies, see ss. 42 (1), (11), 43 (1), (9), *post*; and see also ss. 42 (15), 43 (13), *post*.

Crown. For application of this section to Crown and visiting forces, see ss. 83 (3), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*; and see as to common parts, ss. 42 (13), 43 (11), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "fire certificate", see s. 29 (1), *ante*; for "the Minister", see s. 90 (1), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

36. Employees to be made familiar with means of escape in case of fire.—(1) Effective steps shall be taken to ensure that all persons employed to work in any such premises as are mentioned in section 34 (4) of this Act are familiar with the means of escape from the premises in case of fire and their use and with the routine to be followed in case of fire.

(2) The Minister may make regulations as to the steps to be taken for the purposes of the foregoing subsection in premises to which that subsection applies or in any class of such premises.

NOTES

General effect of section. By sub-s. (1), employees must be made familiar with the means of escape in case of fire, and by sub-s. (2) the Minister may make regulations as to the steps to be taken for that purpose.

This section may be compared with the corresponding provisions of s. 49 (1) and (3) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 294 and Redgrave's Factories Acts (20th Edn.) p. 138).

Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*. See also as to "work . . .", s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

37. Fire prevention.—(1) The Minister may make, as respects premises to which this Act applies, or any specified class of such premises, special regulations as to the measures to be taken to reduce the risk of the outbreak of fire therein or of the spread of any fire that breaks out therein or the smoke therefrom.

(2) Regulations under the foregoing subsection may, amongst other things, prescribe requirements as to the internal construction of premises to which the regulations apply, and the materials used in that construction, and provide, as regards any of the provisions of the regulations, that some other person or persons shall be responsible for a contravention thereof instead of, or as well as, the occupier.

NOTES

General effect of section. By sub-s. (1) the Minister may make special regulations as to fire prevention which may, by sub-s. (2), prescribe requirements as to the internal construction of premises and which may provide for the incidence of liability for a contravention.

This section may be compared with the corresponding provisions of s. 50 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 294 and Redgrave's Factories Acts (20th Edn.) pp. 138, 139).

Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Special regulations. For provisions as to special regulations, see s. 80 (8) and Sch. 1, *post*.

Sub-s. (2): Occupier. See the note to s. 22, *ante*.

Common parts. For the application of this section to common parts of buildings part of which consists of premises to which this Act applies, see ss. 42 (1), (11), 43 (1), (9), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 86 (1), *post*; and note sub-s. (2) of this section.

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963 49
SECTION 39

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For “contravention” and “the Minister”, see s. 90 (1), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October, 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

38. Provision of fire-fighting equipment.—(1) In all premises to which this Act applies there shall be provided and maintained appropriate means for fighting fire, which shall be so placed as to be readily available for use.

(2) The Minister may, as respects any class of premises to which this Act applies, make special regulations prescribing means for fighting fire, and any such regulations may provide for the testing or examination of the means so specified and provide, as regards any of the provisions of the regulations, that some other person or persons shall be responsible for a contravention thereof instead of, or as well as, the occupier.

(3) Any requirement imposed by regulations under the last foregoing subsection may, so far as regards premises of the class to which the regulations apply, be imposed either in substitution for, or without prejudice to, the general requirements of subsection (1) of this section.

NOTES

General effect of section. By sub-s. (1) all premises within the Act must have readily available means for fighting fire. By sub-ss. (2) and (3) the Minister may make special regulations which prescribe means for fighting fire, and for their testing or examination, and which may provide for the incidence of liability for a contravention.

This section may be compared with the corresponding provisions of s. 51 (1), (2), (4) and (5) of the Factories Act 1961 (41 Halsbury’s Statutes (2nd Edn.) 295 and Redgrave’s Factories Acts (20th Edn.) pp. 139, 140).

Nothing in this section applies to open fuel storage premises; see s. 40, *post*.

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Sub-s. (2): Special regulations. For provisions as to special regulations, see s. 80 (8) and Sch. 1, *post*.

Occupier. See the note to s. 22, *ante*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*; and note sub-s. (2) of this section.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For “contravention” and “the Minister”, see s. 90 (1), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations in general and special regulations in particular, see s. 80, *post*; and see also s. 90 (5), *post*.

39. Appropriate authority for purposes of sections 28 to 38.—

(1) Subject to subsection (2) of this section, for the purposes of sections 28 to 38 of this Act the appropriate authority shall, as respects any premises, be the authority discharging in the area in which the premises are situate the functions of fire authority under the Fire Services Act 1947, except that,—

(a) for the purposes of the application of section 34 to premises with respect to which the enforcement of provisions of this Act is provided for by section 52 (4) of this Act, it shall be a factory inspector or a person authorised under section 52 (3) of this Act by the Minister; and

(b) for the purposes of the application of section 34 to premises with respect to which the enforcement of provisions of this Act is provided for by section 52 (6) of this Act, it shall be a mine and quarry inspector or a person authorised under that subsection by the Minister of Power.

(2) In the case of premises with respect to which the enforcement of provisions of this Act by factory inspectors and such persons (other than

factory inspectors) as the Minister may authorise in that behalf is provided for by section 52 (3) of this Act,—

- (a) for the purposes of the provisions of sections 28 to 38 of this Act (except sections 29 (2) and (8) and 30 (3)) the appropriate authority shall be a factory inspector or a person authorised under the said section 52 (3) by the Minister;
- (b) for the purposes of the said excepted provisions, the appropriate authority shall be the factory inspector in charge of the district in which the premises are situate (and accordingly, section 30 (4) (b) and (6) of this Act shall, in the case of such premises, have effect with the substitution, for the word “them”, of the words “the factory inspector in charge of the district in which the premises are situate”).

NOTES

General effect of section. This section defines the appropriate authority for the purposes of the fire precautions provisions of the Act.

Sub-s. (1): Fire authority under the Fire Services Act 1947. This is the county or county borough council, save where a combined fire authority has been constituted by a combination scheme; see the Fire Services Act 1947, ss. 4, 38 (1) (44 Statutes Supp. 47, 80), as to which see also 17 Halsbury's Laws (3rd Edn.) pp. 252 *et seq.*

Factory inspector. For the appointment, duties and powers of factory inspectors, see the Factories Act 1961, ss. 145 to 147 (41 Halsbury's Statutes (2nd Edn.) 382 *et seq.* and Redgrave's Factories Acts (20th Edn.) pp. 365 *et seq.*)

Mine and quarry inspector. For the appointment, duties and powers of mine and quarry inspectors, see the Mines and Quarries Act 1954, ss. 144 to 146 (101 Statutes Supp. 157 *et seq.*), as to which see also 26 Halsbury's Laws (3rd Edn.) pp. 579 *et seq.*

Definitions. For “factory inspector”, “the Minister” and “mine and quarry inspector”, see s. 90 (1), *post*.

Fire Services Act 1947. See 44 Statutes Supp. 41.

40. Exclusion of application of sections 28 to 38 to certain fuel storage premises and modification thereof in relation to others.—Nothing in sections 28 to 38 of this Act or in regulations under any of those sections shall apply to fuel storage premises which are wholly in the open, and, in the case of such premises which are partly in the open, so much of them as is in the open shall, for the purposes of those sections and of such regulations, be treated as not forming part of the premises.

NOTES

General effect of section. This section excepts open fuel storage premises from the fire precautions provisions of the Act.

Fuel storage premises. See s. 1 (3) (a) (v), *ante*.

41. Duty of appropriate authority, if not concerned with construction of buildings, to consult authority so concerned before requiring alterations to be made.—(1) Before the appropriate authority—

- (a) inform the applicant for the issue of a fire certificate with respect to any premises situate elsewhere in England and Wales than in the administrative county of London that they will not issue the certificate unless specified alterations are made to the premises; or
- (b) serve, under section 30 (4) or 35 (2) of this Act, a notice on the occupier of any premises so situate;

they shall, if not themselves the local authority (within the meaning of the Public Health Act 1936) for the area in which the premises are situate, consult that authority.

(2) Before the appropriate authority—

- (a) inform the applicant for the issue of a fire certificate with respect to any premises situate in Scotland that they will not issue the certificate unless specified alterations are made to the premises; or

(b) serve, under section 30(4) or 35(2) of this Act, a notice on the occupier of any premises so situate;

they shall, if not themselves the local authority (within the meaning of the Building (Scotland) Act 1959) for the area in which the premises are situate, consult that authority.

(3) Before the appropriate authority—

(a) inform the applicant for the issue of a fire certificate with respect to any premises situate in the administrative county of London that they will not issue the certificate unless specified alterations are made to the premises; or

(b) serve, under section 30 (4) or 35 (2) of this Act, a notice on the occupier of any premises so situate;

they shall, if not themselves the London County Council, consult that Council.

NOTES

As from 1st April 1965, in sub-s. (1) for the words "administrative county of London" are substituted the words "inner London boroughs, the City of London, the Inner Temple and the Middle Temple", and in sub-s. (3) for the words "administrative county of London" are substituted the words "inner London boroughs, the City of London, the Inner Temple or the Middle Temple" by the London Government Act 1963, s. 51 (2), and by s. 51 (1) of that Act in sub-s. (3) for the words "London County Council" are substituted the words "Greater London Council".

General effect of section. This section imposes a duty upon the appropriate authority, if not themselves the local authority or the London County Council, to consult that authority or Council before requiring alterations as a condition of issuing a fire certificate or before serving a notice under s. 30 (4) or s. 35 (2), *ante*. For amendments as from 1st April 1965, see the first note, *supra*.

Sub-s. (1): Appropriate authority. See s. 39, *ante*.

Fire certificate. For meaning, see s. 29 (1), *ante*.

Occupier. See the note to s. 22, *ante*.

Consult. On what constitutes consultation, see, in particular, *Rollo v. Minister of Town and Country Planning*, [1948] 1 All E.R. 13, C.A., and *Re Union of Whippingham and East Cowes Benefices*, *Derham v. Church Comrs. of England*, [1954] 2 All E.R. 22; [1954] A.C. 245, P.C.

Sub-s. (3): Administrative county of London. This comprises the combined areas of the City, the metropolitan boroughs and the Inner and Middle Temples; see the London Government Act 1939, s. 1 (1) (15 Halsbury's Statutes (2nd Edn.) 1078), and see also 25 Halsbury's Laws (3rd Edn.) p. 4. See as to the position as from 1st April 1965, the first note, *supra*.

London County Council. For the constitution of the London County Council, see the London Government Act 1939, s. 2 (15 Halsbury's Statutes (2nd Edn.) 1079). See as to the position as from 1st April 1965, the first note, *supra*.

Public Health Act 1936. The councils of boroughs, urban districts or rural districts are the local authorities for the purposes of that Act; see s. 1 (2) thereof (19 Halsbury's Statutes (2nd Edn.) 313), and see also 31 Halsbury's Laws (3rd Edn.) pp. 28 *et seq.*

Special Provisions with respect to Buildings whereof Parts are Office, &c., Premises and with respect to certain contiguous Fuel Storage Premises

42. Provisions with respect to buildings in single ownership.—

(1) A building to which this section applies is one all parts of which are in the same ownership and a part of which consists of premises to which this Act applies, being premises held under a lease or an agreement for a lease or under a licence; and in this section a reference to a common part of a building to which this section applies shall be taken to refer to a part of the building that is used for the purposes of, but is not comprised in, a part of the building that consists of premises to which this Act applies.

(2) The following provisions shall have effect for securing the cleanliness of common parts of buildings to which this section applies, that is to say:—

(a) every common part of a building to which this section applies, and all furniture, furnishings and fittings in such a part, shall be kept in a clean state;

- (b) the Minister may by regulations made as respects common parts of buildings to which this section applies, or any class of such common parts, require such steps as may be prescribed to be taken for securing the cleanliness of the parts to which the regulations apply, but nothing in regulations under this paragraph shall be construed as being in derogation of the general obligation imposed by the foregoing paragraph.
- (3) The following provisions shall have effect for securing the illumination of common parts of buildings to which this section applies, that is to say:—
 - (a) effective provision shall be made for securing and maintaining, in every such part of a common part of a building to which this section applies as the following, namely, a part in which persons are working or passing, suitable and sufficient lighting, whether natural or artificial;
 - (b) the Minister may by regulations made as respects common parts of buildings to which this section applies, or any class of such common parts, prescribe a standard of lighting conformity to which shall be obligatory and a sufficient compliance with the foregoing paragraph;
 - (c) all glazed windows and skylights used for the lighting of a part of a common part of a building to which this section applies in which the securing of lighting is required by this subsection to be provided for shall, so far as reasonably practicable, be kept clean on both the inner and outer surfaces and free from obstruction;
 - (d) all apparatus installed in a common part of a building to which this section applies for producing artificial lighting in a part of that part in which the securing of lighting is required by this subsection to be provided for shall be properly maintained;

but paragraph (c) above shall not affect the whitewashing or shading of windows or skylights for the purpose of mitigating heat or glare.

(4) Section 16 (1) of this Act shall apply to floors, stairs, steps, passages and gangways comprised in, or constituting, a common part of a building to which this section applies as it applies to floors, stairs, steps, passages and gangways in premises to which this Act applies, section 16 (2) of this Act shall apply to a staircase comprised in, or constituting, a common part of such a building as it applies to such a staircase as is mentioned in that subsection, and section 16 (3) of this Act shall apply to an open side of such a staircase as is first mentioned in this subsection as it applies to an open side of such a staircase as is mentioned in the said subsection (2).

(5) In the event of a contravention, in relation to a common part of a building to which this section applies, of subsection (2) or (3) of this section or of regulations under either of those subsections, and in the event of a contravention, in relation to any thing constituting, or comprised in, any such common part, of section 16 of this Act as applied by the last foregoing subsection, the owner of the building shall be guilty of an offence.

(6) For a contravention, in relation to premises comprised in a building to which this section applies, of section 9 of this Act (other than a contravention consisting in a failure to keep clean conveniences provided in pursuance of that section, not being conveniences provided for use jointly by the persons employed to work in the premises and by other persons), the owner of the building shall be responsible instead of the occupier of the premises.

(7) For a contravention, in relation to premises comprised in a building to which this section applies, of section 10 of this Act (other than a contravention consisting in a failure to provide means of cleaning or drying or a failure to keep clean and in orderly condition the place where facilities are provided in pursuance of that section, not being facilities provided for use jointly by the persons employed to work in the premises and by other

persons) the owner of the building shall be responsible instead of the occupier of the premises.

(8) Section 22 of this Act (except so far as relating to operations or processes) shall, with the substitution, for references to the occupier of the premises, of references to the owner of the building, have effect in relation to a common part of a building to which this section applies, and to machinery, plant, equipment and appliances used in such a part, as it has effect in relation to premises to which this Act applies, and to machinery, plant, equipment and appliances used in such premises.

(9) Where the occupier of premises comprised in a building in England or Wales to which this section applies is the defendant to a complaint made under section 22 of this Act with respect to the premises on the ground specified in subsection (1) (a) or (b) of that section, a copy of the summons issued in consequence of the making of the complaint together with a notice stating that he will be entitled to appear at the hearing of the complaint shall be served on the owner of the building in like manner as a summons falling to be served on him is required to be served and he shall, if he appears at the hearing, be deemed to be a defendant to the complaint; and the powers of the court under section 55 (1) of the Magistrates' Courts Act 1952 shall be deemed to include power, whatever adjudication the court makes on the complaint, to order any of the parties to pay the whole or part of the costs of either or both of the others.

(10) Where the occupier of premises comprised in a building in Scotland to which this section applies is a defender in a summary application made under section 22 of this Act in respect of the premises on the ground specified in subsection (1) (a) or (b) of that section, a copy of the application together with notice of the place, date and time fixed for the hearing of it shall be served on the owner of the building and he shall thereafter be a party to the proceedings.

(11) In the application, to premises comprised in a building to which this section applies, of the provisions of this Act with respect to fire precautions, references to the premises shall be construed as including references to a part of the building that is used for the purposes of, but is not comprised in, the premises, and references to the owner of the building shall be substituted for references to the occupier of the premises.

(12) A copy of any fire certificate issued with respect to any premises which, at the time of the issue of the certificate, are comprised in a building to which this section applies, shall be sent to the occupier of the premises by the authority who issued it and section 29 (6) of this Act shall apply to the copy instead of to the certificate.

(13) For a contravention, in relation to premises comprised in a building to which this section applies, of section 28 of this Act, for a contravention, in relation to such premises, of section 30 (1) of this Act (other than a contravention consisting in a failure to keep free from obstruction, being a contravention caused by the use of the premises), and for a contravention, in relation to such premises, of section 33 (3) of this Act or of regulations under section 35 (1) thereof, the owner of the building shall be responsible instead of the occupier of the premises.

(14) Section 34 (1) of this Act shall, in its application to premises comprised in a building to which this section applies, have effect as if it required the warning referred to therein to be perceptible in every part of the building used for the purposes of, but not comprised in, the premises, in every other set of premises comprised in the building which are premises to which this Act applies, and in every part of the building used for the purposes of, but not comprised in, any other such set of premises as aforesaid; and for a contravention, in relation to premises comprised in such a building, of that section, the owner of the building shall be responsible instead of the occupier of the premises.

(15) If, on a complaint (or, in Scotland, a summary application) made by the owner of a building to which this section applies to an appropriate court, the court is satisfied that the occupier of any part of the building prevents the owner from making, to premises to which this Act applies which are comprised in the building, any alterations the making of which is requisite in order to permit of a fire certificate's being issued with respect to the premises or any alterations specified in a notice served on him under section 30 (4) or 35 (2) of this Act, or prevents the carrying out, in pursuance of, or of a requirement imposed under, section 34 (2) of this Act, of a test or examination of means of giving warning in case of fire, the court may order that occupier to permit the making of the alterations or, as the case may be, the carrying out of the test or examination.

In this subsection "appropriate court" means, as regards a building in England or Wales, a magistrates' court acting for the petty sessions area in which the building is situate and, as regards a building in Scotland, the sheriff within whose jurisdiction it is situate.

(16) The occupier of any premises to which this Act applies which are comprised in a building to which this section applies shall furnish to the owner of the building any information in the possession of the occupier the possession of which by the owner is requisite to enable him to comply, in the case of the premises, with section 30 (3) of this Act, and if the occupier fails so to do he shall be guilty of an offence.

NOTES

General effect of section. This section provides that, where a building is in single ownership and any part of it consists of premises within the Act occupied under a lease or licence, the building owner must (under sub-ss. (2) and (3)) ensure the cleanliness and proper illumination of the common parts of the building and must comply with regulations which may be made with regard to those matters and (under sub-s. (4)) must also comply with s. 16, *ante*, which is applied to the floors, stairs, etc., in the common parts of the building. Under sub-s. (5) the owner of such a building and not the occupier of the premises within the Act is responsible for a contravention of s. 9, *ante*, with regard to the provision and maintenance of sanitary conveniences and their lighting, ventilation and, unless provided for the exclusive use of persons employed in the premises, their cleanliness. The owner is (under sub-s. (7)) similarly liable for a contravention of s. 10, *ante*, with regard to the provision of washing facilities, except that, where the facilities are for the exclusive use of the persons employed in the premises, the owner is not responsible for providing soap and towels or for keeping the place clean. The section further provides, by sub-ss. (8), (9) and (10), for orders to be made under s. 22, *ante*, in relation to the construction or condition of the common parts of the building or of machinery, etc., used therein, and for the service on the building owner of a copy of any process under s. 22 relating to those matters which is served on the occupier of the premises, and for the owner being treated as a party to the proceedings. By sub-s. (11) the provisions as to fire precautions contained in ss. 28–41, *ante*, are applied to those parts of such a building as are used for the purposes of, but are outside, the premises within the Act and the building owner is made responsible for complying with those provisions. By sub-s. (12), a copy of any fire certificate issued in accordance with s. 29 (5), *ante*, in respect of any premises in such a building must be sent to the occupier of the premises, who must keep the copy certificate on the premises as provided by s. 29 (6), *ante*. The building owner, instead of the occupier of the premises, is (by sub-s. (13)) made responsible for any contravention of s. 30 (1), *ante*, with regard to the maintenance and freedom from obstruction of fire escapes, except where the obstruction is caused by the use of the premises, and for the marking of the means of escape in accordance with s. 33 (3), *ante*, as well as for compliance with any regulations made under s. 35 (1), *ante*. By sub-s. (14), the fire alarm required to be provided by s. 34 (1), *ante*, must be perceptible in all common parts of such a building and in all other premises within the Act comprised in the building and the building owner is made responsible for any contravention of that section instead of the occupier of the premises.

A magistrates' court may, by sub-s. (15), order the occupier of premises in such a building to give the owner facilities to make any alterations which may be necessary to enable a fire certificate to be issued or which are specified in a notice served on the owner under ss. 30 (4) or 35 (2), *ante*, or to permit the owner to test or examine the fire alarm in accordance with s. 34 (2), *ante*.

By sub-s. (16) the occupier of premises within the Act in such a building must give the building owner information of any proposals which may affect the validity of the fire certificate and which it is necessary for the owner to have in order that he may comply with s. 30 (3), *ante*.

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This and the next following section may be compared with ss. 120-122 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 355-357 and Redgrave's Factories Acts (20th Edn.) pp. 309-315).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Sub-s. (2). Cf. s. 4, *ante*, and see the notes thereto.

Sub-s. (3). Cf. s. 8, *ante*, and see the notes thereto.

Persons . . . working or passing. *Semble* neither the persons working nor the persons passing need be employed by the occupier of the premises within the Act or by the owner of the building.

Reasonably practicable. See the note to s. 6 (3), *ante*.

Free from obstruction. Cf. the note "Obstruction" to s. 16, *ante*.

Properly maintained. Cf. the note "Of sound construction and properly maintained" to s. 16, *ante*.

Sub-s. (4): Floors; gangways; staircase. See the notes to s. 16, *ante*.

Sub-s. (5): Offence. For further provisions, see ss. 64 *et seq.*, 70, 86 (1), *post*.

Sub-s. (6). See the notes to s. 9, *ante*.

The owner shall be responsible, etc. The owner is accordingly guilty of an offence and may be liable in tort; see s. 63, *post*.

Occupier. See the note to s. 22, *ante*.

Sub-s. (7). See the notes to s. 10, *ante*.

The owner shall be responsible, etc. See the note to sub-s. (6), *supra*.

Sub-s. (8). See the notes to s. 22, *ante*.

Sub-s. (9): Shall be served . . . in like manner, etc. See the Magistrates' Courts Rules 1952 (S.I. 1952 No. 2190, r. 76; 13 Halsbury's Statutory Instruments, title Magistrates, Part 1); and see also the Companies Act 1948, s. 437 (3 Halsbury's Statutes (2nd Edn.) 780).

Sub-s. (11): Provisions . . . with respect to fire precaution. See ss. 28-41, *ante*, and the notes thereto.

Sub-s. (12): Shall be sent. For provisions as to the sending of documents, see s. 81, *post*.

Sub-s. (15): Complaint. For provisions as to jurisdiction and procedure, see the Magistrates' Courts Act 1952, ss. 43 *et seq.* (125 Statutes Supp. 153 *et seq.*).

An appeal to quarter sessions lies from the decision on a complaint under s. 72, *post*.

Prevents. There is authority for saying that "prevent" is a stronger term than "hinder" and means "render impossible"; see *Tennants (Lancaster), Ltd. v. C. S. Wilson & Co., Ltd.*, [1917] A.C. 495, H.L., at p. 518, *per* Lord Atkinson.

May order, etc. See the note "May . . . prohibit, etc." to s. 22, *ante*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "building", "contravention", "magistrates' court", "the Minister", "notice", "owner", "ownership" and "petty sessions area", see s. 90 (1), *post*; for "employed", see s. 90 (1), (4), *post*; for "fire certificate", see s. 29 (1), *ante*. See also as to "machinery, plant, etc.", s. 90 (2), *post*; and note, as to "appropriate court", sub-s. (15) of this section and as to "common part", etc., sub-s. (1).

Magistrates' Courts Act 1952, s. 55 (1). See 125 Statutes Supp. 158.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For general provisions as to regulations, see s. 80, *post*.

43. Provisions with respect to buildings plurally owned.—

(1) A building to which this section applies is one of which different parts are owned by different persons and of which a part consists of premises to which this Act applies; and in this section a reference to a common part of a building to which this section applies shall be taken to refer to a part of the building that is used for the purposes of, but is not comprised in, a part of the building that consists of premises to which this Act applies.

(2) Subsections (2) and (3) of the last foregoing section shall, with the substitution, for references to buildings to which that section applies and to common parts thereof, of references respectively to buildings to which this section applies and to common parts thereof, have effect for securing the cleanliness and illumination of common parts of buildings to which this section applies as they have effect for securing the cleanliness and illumination of common parts of buildings to which that section applies; and in the

event of a contravention, in relation to a common part of a building to which this section applies, of either of those subsections or of regulations under either of them, the owner of the part (or, if there are more owners than one of the part, each of them) shall be guilty of an offence.

(3) Section 16 (1) of this Act shall apply to floors, stairs, steps, passages and gangways comprised in, or constituting, a common part of a building to which this section applies as it applies to floors, stairs, steps, passages and gangways in premises to which this Act applies, section 16 (2) of this Act shall apply to a staircase comprised in, or constituting, a common part of such a building as it applies to such a staircase as is mentioned in that subsection, and section 16 (3) of this Act shall apply to an open side of such a staircase as is first-mentioned in this subsection as it applies to an open side of such a staircase as is mentioned in the said subsection (2); and in the event of a contravention, in relation to any thing constituting, or comprised in, any such common part, of section 16 of this Act as applied by this subsection, the owner of the part (or if there are more owners than one of the part, each of them) shall be guilty of an offence.

(4) For a contravention, in relation to premises consisting of part of any such part of a building to which this section applies as is owned by one of the persons who between them own the building (being premises held under a lease or an agreement for a lease or under a licence), of section 9 of this Act (other than a contravention consisting in a failure to keep clean conveniences provided in pursuance of that section, not being conveniences provided for use jointly by the persons employed to work in the premises and by other persons), the first-mentioned person shall be responsible instead of the occupier of the premises.

(5) For a contravention, in relation to premises consisting of part of any such part of a building to which this section applies as is owned by one of the persons who between them own the building (being premises held under a lease or an agreement for a lease or under a licence), of section 10 of this Act (other than a contravention consisting in a failure to provide means of cleaning or drying or a failure to keep clean and in orderly condition the place where facilities are provided in pursuance of that section, not being facilities provided for use jointly by the persons employed to work in the premises and by other persons) the first-mentioned person shall be responsible instead of the occupier of the premises.

(6) Section 22 of this Act (except so far as relating to operations or processes) shall, with the substitution, for references to the occupier of the premises, of references to the persons who between them own the building, have effect in relation to a common part of a building to which this section applies, and to machinery, plant, equipment and appliances used in such a part, as it has effect in relation to premises to which this Act applies, and to machinery, plant, equipment and appliances used in such premises.

(7) Where the occupier of premises comprised in a building in England or Wales to which this section applies is the defendant to a complaint made under section 22 of this Act with respect to the premises on the ground specified in subsection (1) (a) or (b) of that section, a copy of the summons issued in consequence of the making of the complaint together with a notice stating that he will be entitled to appear at the hearing of the complaint shall be served on each of the persons who between them own the building in like manner as a summons falling to be served on him is required to be served and he shall, if he appears at the hearing, be deemed to be a defendant to the complaint; and the powers of the court under section 55 (1) of the Magistrates' Courts Act 1952 shall be deemed to include power, whatever adjudication the court makes on the complaint, to order any of the parties to pay the whole or part of the costs of all or any of the others.

(8) Where the occupier of premises comprised in a building in Scotland to which this section applies is a defender in a summary application made under section 22 of this Act in respect of the premises on the ground specified

in subsection (1)(a) or (b) of that section, a copy of the application together with notice of the place, date and time fixed for the hearing of it shall be served on each of the persons who between them own the building and they shall thereafter be parties to the proceedings.

(9) In the application, to premises comprised in a building to which this section applies, of the provisions of this Act with respect to fire precautions—

- (a) references to the premises shall be construed as including references to any part of the building used for the purposes of, but not comprised in, the premises;
- (b) for references to the occupier of the premises (except the reference in section 29 (5)) there shall be substituted references to the persons who between them own the building; and
- (c) for the reference in the said section 29 (5) to the occupier of the premises there shall be substituted a reference to the person who owns the part of the building of which the premises consist.

(10) A copy of any fire certificate issued with respect to any premises which, at the time of the issue of the certificate, are comprised in a building to which this section applies, shall be sent to the occupier of the premises by the authority who issued it, and section 29 (6) of this Act shall apply to the copy instead of to the certificate.

(11) For a contravention, in relation to premises comprised in a building to which this section applies; of section 28 of this Act, for a contravention, in relation to such premises, of section 30 (1) of this Act (other than a contravention consisting in a failure to keep means of escape free from obstruction, being a failure caused by the use of the premises), and for a contravention, in relation to such premises, of section 33 (3) of this Act or of regulations under section 35 (1) thereof, each of the persons who between them own the building shall be responsible instead of the occupier of the premises.

(12) Section 34 (1) of this Act shall, in its application to premises comprised in a building to which this section applies, have effect as if it required the warning referred to therein to be perceptible in every part of the building used for the purposes of, but not comprised in, the premises, in every other set of premises comprised in the building which are premises to which this Act applies, and in every part of the building used for the purposes of, but not comprised in, any other such set of premises as aforesaid; and for a contravention, in relation to premises comprised in such a building, of that section, each of the persons who between them own the building shall be responsible instead of the occupier of the premises.

(13) If, on a complaint (or, in Scotland, a summary application) made to an appropriate court by one of the persons who, between them, own a building to which this section applies, the court is satisfied that another of those persons or any other person having an estate or interest in the building prevents the making, to premises to which this Act applies which are comprised in the building, of any alterations the making of which is requisite in order to permit of a fire certificate's being issued with respect to the premises or of any alterations specified in a notice served on those persons under section 30 (4) or 35 (2) of this Act, or prevents the carrying out in pursuance of, or of a requirement imposed under, section 34 (2) of this Act, of a test or examination of means of giving warning in case of fire, the court may order that other person to permit the making of the alterations or, as the case may be, the carrying out of the test or examination.

In this subsection "appropriate court" means, as regards a building in England or Wales, a magistrates' court acting for the petty sessions area in which the building is situate and, as regards a building in Scotland, the sheriff within whose jurisdiction it is situate.

(14) The occupier of any premises to which this Act applies which are comprised in a building to which this section applies shall furnish to each of the persons who between them own the building any information in the

possession of the occupier the possession of which by the persons aforesaid is requisite to enable them to comply, in the case of the premises, with section 30 (3) of this Act, and if the occupier fails so to do he shall be guilty of an offence.

NOTES

General effect of section. This section applies to buildings of which different parts are owned by different persons and of which a part consists of premises within the Act. By sub-s. (2) the provisions of s. 42 (2), (3), *ante*, are applied to the common parts of such a building and the owner or owners of a common part who contravene those provisions commit an offence. S. 16, *ante*, is, by sub-s. (3), applied to the floors, stairs, etc., in the common parts of such a building, and the owner or owners of the common part are responsible for any contravention of that section. Where premises are held under a lease or licence and owned by one of the persons who between them own the building, the owner is, by sub-s. (4), made responsible for a contravention of s. 9, *ante*, with regard to the provision and maintenance of sanitary conveniences and their lighting, ventilation and, unless provided for the exclusive use of persons employed in the premises, their cleanliness. In a similar case the owner is, by sub-s. (5), made responsible for a contravention of s. 10, *ante*, with regard to the provision of washing facilities, except that, where the facilities are provided for the exclusive use of persons employed in the premises, the owner is not responsible for providing soap and towels or for keeping the place clean. This section further provides, by sub-ss. (6), (7) and (8), for orders to be made under s. 22, *ante*, in relation to the construction or condition of the common parts of such a building or of the machinery, etc., used therein; for the service on the persons who between them own the building of a copy of any process under s. 22 relating to those matters which is served on the occupier of the premises; and for those of them who appear at the hearing to be treated as parties to the proceedings. By sub-s. (9) the provisions as to fire precautions contained in ss. 28–41, *ante*, are extended to those parts of such a building as are used for the purposes of, but are outside, the premises within the Act, and the persons who between them own the building are made responsible for complying with those provisions. By the same sub-s., the fire certificate issued in accordance with s. 29 (5) must be sent to the owner of that part of the building which comprises the premises within the Act and, by sub-s. (10), a copy of it must be sent to the occupier of the premises, who must keep the copy on those premises in accordance with s. 29 (6), *ante*. Each of the persons who between them own the building, instead of the occupier of the premises within the Act, is, by sub-s. (11), made responsible for any contravention of s. 30 (1), *ante*, with regard to the maintenance and freedom from obstruction of fire escapes (except where the obstruction is caused by the use of the premises) and for the marking of the means of escape in accordance with s. 33 (3), *ante*, as well as for compliance with any regulations made under s. 35 (1), *ante*. By sub-s. (12) the fire alarm required to be provided by s. 34 (1), *ante*, must be perceptible in all common parts of such a building and in all other premises within the Act comprised in the building and each of the persons who between them own the building is made responsible for any contravention of that section, instead of the occupier of the premises. A magistrates' court may, by sub-s. (13), order a person with an estate or interest in the building to permit the making of any alterations which may be necessary to enable a fire certificate to be issued or which are specified in a notice under ss. 30 (4) or 35 (2), *ante*, or to permit the testing or examination of the fire alarm in accordance with s. 34 (2), *ante*.

By sub-s. (14) the occupier of premises within the Act comprised in such a building must give to each of the persons who between them own the building information of any proposals which may affect the validity of the fire certificate and which it is necessary for those persons to have in order that they may comply with s. 30 (3), *ante*.

This and the preceding section may be compared with ss. 120–122 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 355–357 and Redgrave's Factories Acts (20th Edn.) pp. 309–315).

Sub-s. (1): Premises to which this Act applies. See ss. 1 to 3, *ante*.

Sub-s. (2): Offence. For further provisions, see ss. 64 *et seq.*, 70, 86 (1), *post*.

Sub-s. (3): Floors; gangways; staircase. See the notes to s. 16, *ante*.

Sub-s. (4): Occupier. See the note to s. 22, *ante*.

Sub-s. (7): Shall be served . . . in like manner, etc. See the note to s. 42, *ante*.

Sub-s. (10): Shall be sent. For provisions as to the sending of documents, see s. 81, *post*.

Sub-s. (13): Complaint; prevents. See the notes to s. 42, *ante*.

May order, etc. See the note "May . . . prohibit, etc." to s. 22, *ante*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "building", "contravention", "magistrates' court", "notice", "owned", "owner" and "petty sessions area", see s. 90 (1), *post*; for "employed",

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see s. 90 (1), (4), *post*; for "fire certificate", see s. 29 (1), *ante*. See also as to "machinery, plant, etc.", s. 90 (2), *post*; and note as to "appropriate court", sub-s. (10) of this section and as to "common part", etc., sub-s. (1).

Magistrates' Courts Act 1952, s. 55 (1). See 125 Statutes Supp. 158.

44. Provisions with respect to contiguous fuel storage premises in single ownership.—Where two sets or more of fuel storage premises any of which is held under a lease or an agreement for a lease or under a licence are established on a parcel of land all parts of which are in the same ownership, then—

- (a) for a contravention, in relation to any of those sets of premises, of section 9 of this Act (other than a contravention consisting in a failure to keep clean conveniences provided in pursuance of that section, not being conveniences provided for use jointly by the persons employed to work in that set of premises and by other persons); and
- (b) for a contravention, in relation to any of those sets of premises, of section 10 of this Act (other than a contravention consisting in a failure to provide means of cleaning and drying or a failure to keep clean and in orderly condition the place where facilities are provided in pursuance of that section, not being facilities provided for use jointly by the persons employed to work in that set of premises and by other persons);

the owner of that set of premises shall be responsible instead of the occupier thereof.

NOTES

General effect of section. This section provides that where all parts of the land on which two or more fuel storage premises are established are in the same ownership, and any of them is occupied under a lease or licence, the owner of the land, instead of the occupier of the premises, is responsible for any contravention (a) of s. 9 with regard to the provision and maintenance of sanitary conveniences and their lighting, ventilation and, unless provided for the exclusive use of persons employed on the premises, their cleanliness; and (b) of s. 10 with regard to the provision of washing facilities, except that where the facilities are provided for the exclusive use of the persons employed on the premises, the owner of the land is not responsible for providing soap and towels or for keeping the place clean.

The owner . . . shall be responsible, etc. See the note to s. 42, *ante*.

Occupier. See the note to s. 22, *ante*.

Definitions. For "contravention", "owner" and "ownership", see s. 90 (1), *post*; for "employed", see s. 90 (1), (4), *post*; for "fuel storage premises", see s. 1 (3) (a) (v), (5), *ante*.

Exemptions

45. Power of the Minister to grant exemptions from certain requirements of Act.—(1) The Minister may by order exempt—

- (a) from all or any of the requirements imposed by sections 5 (2) and 6 of this Act, premises of any class or rooms of any class;
- (b) from all or any of the requirements imposed by sections 9 and 10 of this Act, premises of any class;

in cases where, in his opinion, it would, by reason of special circumstances, be unreasonable to require compliance with the requirements or requirement from which exemption is granted.

(2) An exemption under this section may be granted unconditionally or subject to conditions and without limit of time or for a specified period.

(3) The grant of an exemption under this section for a specified period shall not preclude the grant of the like exemption for further periods by further orders.

(4) The Minister shall not make an order under this section except after consultation with an organisation which appears to him to be representative of workers concerned and an organisation which appears to him to be

representative of employers concerned and an organisation which appears to him to be representative of any other persons who appear to him to be concerned.

(5) In this section “organisation” includes—

- (a) in relation to workers, an association of trade unions; and
- (b) in relation to employers, an association of organisations of employers and also any body established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking;

and “trade union” includes an association of trade unions.

NOTES

General effect of section. This section provides that, after consultation with organisations representing the workers, the employers and any other persons concerned, the Minister may by order exempt premises or rooms of any class from the requirements of s. 5 (2), *ante*, with regard to overcrowding, and the requirements of s. 6, *ante*, with regard to the maintenance of a reasonable temperature, and may similarly exempt any class of premises from the requirements of ss. 9 and 10, *ante*, with regard to the provision of sanitary conveniences and washing facilities.

The power to exempt premises from the requirements of s. 10 may be compared with that contained in s. 58 (3), (4) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 299 and Redgrave's Factories Acts (20th Edn.) p. 146).

Sub-s. (1): Opinion. See the note to s. 6, *ante*.

Sub-s. (4): Consultation. See the note “Consult” to s. 41, *ante*.

Appears. Cf. the note to s. 20, *ante*.

Definitions. For “the Minister”, see s. 90 (1), *post*. Note as to “organisation” and “trade union”, sub-s. (5) of this section.

Orders under this section. No order had been made under this section up to 14th October 1963.

For provisions as to orders, see s. 80, *post*; and see also s. 90 (5), *post*.

46. Power of authorities who enforce Act to grant exemptions from certain requirements thereof.—(1) The authority having power to enforce, with respect to any premises, the following provisions of this Act, namely, section 5 (2) and sections 6 and 9, may—

- (a) exempt the premises or any room therein from all or any of the requirements imposed by the said sections 5 (2) and 6;
- (b) exempt the premises from all or any of the requirements imposed by the said section 9;

if satisfied that, in the circumstances affecting the subject of the exemption, compliance with the requirements or requirement from which exemption is granted is not reasonably practicable.

(2) The authority having power to enforce section 10 (1) of this Act with respect to any premises may, if satisfied that it is not reasonably practicable for running water to be supplied there or for running water so supplied to be heated, exempt the premises from so much of that subsection as requires the water supplied to be running water.

(3) An exemption under subsection (1) of this section of, or of a room in, any premises from a requirement of a provision of this Act may be granted for a period not exceeding two years, but may from time to time be extended for a further such period beyond the expiration of the period at the expiration of which it would otherwise expire if the authority having power to enforce that provision with respect to the premises are satisfied as mentioned in subsection (1) of this section and are further satisfied that the person who, if the exemption were not in force, would be responsible for a contravention in relation to the premises of that provision (being a contravention consisting in a failure to comply with that requirement) has not failed to do anything the doing of which might have rendered compliance with that requirement reasonably practicable.

(4) An exemption under subsection (2) of this section may be granted without limit of time or for a specified period; but the grant of such an

exemption for a specified period shall not preclude the grant of the like exemption for further periods.

(5) An exemption of, or of a room in, any premises from a requirement imposed by a provision of this Act shall not be granted or extended under this section—

(a) except upon application made to the appropriate authority, in such form as may be prescribed by order made by the Minister,—

(i) in a case where the grant of an exemption is sought, by the person who would be responsible for a contravention in relation to the premises of that provision (being a contravention consisting in a failure to comply with that requirement);

(ii) in a case where the extension of an exemption is sought, by the person who, if the exemption were not in force, would be responsible as aforesaid;

(b) unless the application is accompanied by a certificate in such form as may be so prescribed, that the obligation to which the applicant is subject by virtue of subsection (6) (a) below has been complied with; and

(c) until the expiration of the period of fourteen days beginning with the day next following that on which the application is made.

(6) In relation to an application for the grant or extension of an exemption under this section of, or of a room in, any premises, compliance by the applicant with the following requirements shall be requisite, namely,—

(a) he must, immediately before the application is made, post in the premises, in such a position, and in such characters, as to be easily seen and read by the persons employed to work in the premises, a notice—

(i) stating that such an application is being made;

(ii) specifying the requirement from which exemption or, as the case may be, further exemption, is being sought;

(iii) specifying the period for which the grant or, as the case may be, the extension, is being sought (or if, where a grant of exemption is being sought under subsection (2) of this section, it be the case that the grant thereof without limit of time is being sought, specifying that fact);

(iv) specifying the name and address of the authority to whom the application is being made and notifying the persons aforesaid that written representations with respect to the application may be made by any of them to that authority before the expiration of the period of fourteen days beginning with the day next following that on which the notice is posted in compliance with this paragraph;

(b) he must keep the said notice posted as aforesaid throughout the last-mentioned period;

and a person making an application under this section who fails to comply with an obligation to which he is, in relation to the application, subject by virtue of this subsection shall be guilty of an offence and liable to a fine not exceeding twenty pounds.

(7) An exemption under this section of, or of a room in, any premises from a requirement imposed by a provision of this Act may, if the authority having power to enforce that provision with respect to the premises cease to be satisfied with respect to the matters with respect to which they were satisfied when the exemption was granted or, if the exemption has been extended under subsection (3) of this section, when it was extended, be withdrawn by that authority provided that three months' notice of intention to withdraw it has been given to the person who, if the exemption were not in force, would be responsible for a contravention in relation to the

premises of that provision (being a contravention consisting in a failure to comply with that requirement).

(8) Where an exemption of, or of a room in, any premises from a requirement imposed by a provision of this Act or an extension of such an exemption is granted under this section by an authority, a certificate of the grant or extension shall be sent by the authority to the person who, if the exemption were not in force, would be responsible for a contravention in relation to the premises of that provision (being a contravention consisting in a failure to comply with that requirement).

(9) A certificate such as is mentioned in the last foregoing subsection shall, so long as the exemption whose grant or extension is certified thereby continues in force, be kept posted in the premises to which the exemption relates in such a position as to be easily seen and read by the persons employed to work in the premises.

(10) Notice of the refusal by an authority to grant or extend an exemption under this section shall be given by them to the applicant for the grant or extension and also (if it be the case that representations with respect to the application were duly made by the persons employed to work in the premises to which the application related or any of those persons), either individually to such of those persons as duly made representations or to a person appearing to the authority to be representative of such of those persons as duly made representations or to each of a number of persons who appear to the authority to be representative between them of such of those persons as duly made representations.

(11) A person who is aggrieved—

(a) by the refusal of an authority to grant or extend an exemption under this section of, or of a room in, any premises; or

(b) by a notice of intention to withdraw such an exemption;

may, within twenty-one days of the refusal or, as the case may be, service of the notice, appeal, if the premises are situate in England or Wales, to a magistrates' court acting for the petty sessions area in which they are situate, or, if they are situate in Scotland, to the sheriff within whose jurisdiction they are situate, and on any such appeal—

(i) in a case falling within paragraph (a) above, the court or sheriff, if satisfied with respect to the matters with respect to which the authority would have to have been satisfied as a condition of their granting or extending the exemption, may order the authority to grant or extend it, in the case of an exemption under subsection (1) of this section, for such period not exceeding two years as may be specified in the order, and, in the case of an exemption under subsection (2) of this section, either without limit of time or for such period as may be so specified;

(ii) in a case falling within paragraph (b) above, the court or sheriff, if satisfied with respect to the matters with respect to which the authority were satisfied when the exemption was granted or, if it has been extended, when it was extended, may order the authority to cancel the notice of intention to withdraw the exemption.

(12) An application for the grant under this section of an exemption of, or of a room in, any premises from a requirement imposed by section 5 (2), 6, 9 or 10 (1) of this Act may be made, and such an exemption may be granted, despite the fact that the provision imposing the requirement is not in force in relation to the premises, but such an application shall not be entertained unless an order has been made under the following provisions of this Act appointing either in relation to all premises to which this Act applies or in relation to premises of a class within which fall the premises in question, a day for the coming into operation of that provision; and for the purposes of the application of the foregoing provisions of this section to an application made by virtue of this subsection—

- (a) references to the authority having power to enforce with respect to the premises the provision imposing the requirement from which exemption is sought shall be construed as referring to the authority who would have power so to enforce that provision if it were in force; and
 - (b) the reference in subsection (5) (a) (i) to the person who would be responsible for such a contravention in relation to the premises of that provision as is therein mentioned shall be construed as referring to the person who, if that provision were in force, would be responsible for such a contravention as is so mentioned and the reference in subsection (8) to the person who, if the exemption were not in force, would be responsible as aforesaid shall, if the exemption is granted and the provision in question is not in force at the time of the grant, be similarly construed.
- (13) In relation to an application made under this section with respect to, or to a room in, premises which form part of a building to which section 42 or 43 of this Act applies, subsection (6) above shall have effect with the substitution, for the words in paragraph (a) "post in the premises", of the words "post in the premises or in a part of the building which for the purposes of the said section 42 or the said section 43 (as the case may be) is referred to as a common part of the building".
- (14) For the purposes of subsection (5) of this section, "appropriate authority", in relation to an application for the grant or extension of an exemption of, or of a room in, any premises from a requirement imposed by section 5 (2), 6, 9 or 10 (1) of this Act,—
- (a) where the authority who, by virtue of section 52 of this Act, have power to enforce with respect to the premises the provision imposing the requirement (or, where the application is made by virtue of subsection (12) above, the authority who, by virtue of that section, would have power so to enforce that provision if it were in force) is other than a factory inspector, a mine and quarry inspector or a person authorised under subsection (3) or (6) of the said section 52, means that authority;
 - (b) where the authority who, by virtue of the said section 52, have power to enforce with respect to the premises the provision imposing the requirement (or, where the application is made as aforesaid, the authority who, by virtue of that section, would have power so to enforce that provision if it were in force) is a factory inspector or a person authorised under section 52 (3) of this Act, means the factory inspector in charge of the district in which the premises are situate;
 - (c) where the authority who, by virtue of the said section 52, have power to enforce with respect to the premises the provision imposing the requirement (or, where the application is made as aforesaid, the authority who, by virtue of that section, would have power so to enforce that provision if it were in force) is a mine and quarry inspector or a person authorised under section 52 (6) of this Act, means the mine and quarry inspector in charge of the district in which the premises are situate.

NOTES

General effect of section. This section provides, by sub-s. (1), that the enforcing authority may exempt any premises or room from the requirements of s. 5 (2), *ante* (overcrowding), s. 6, *ante* (reasonable temperature), and may exempt any premises from the requirements of s. 9, *ante* (provision of sanitary conveniences), if satisfied that compliance with the requirements of these sections is not reasonably practicable. By sub-s. (2) the enforcing authority may exempt any premises from the requirement of s. 10 (1), *ante*, that water for washing shall be running water, if satisfied that the provision of running water is not reasonably practicable. Sub-s. (3) provides that exemptions under sub-s. (1) may be granted for any period up to two years and be

extended from time to time for a similar period provided that the authority is satisfied that compliance is not reasonably practicable and that the person responsible has not failed to do anything which might have made it so. By sub-s. (4) an exemption under sub-s. (2) may be unlimited or for a specified time; if the latter, exemptions may be granted for further periods. Sub-s. (5) provides that exemptions are not to be granted or extended (i) unless application is made to the appropriate authority in the prescribed form by the person who would be responsible for a contravention if the exemption were not granted or extended; (ii) unless the application is accompanied by a certificate of compliance with sub-s. 6 (4); and (iii) until a period of fourteen days has elapsed, beginning on the day following the application. Sub-s. (6) requires the applicant, immediately before applying for the grant or extension of an exemption, to post on the premises a notice giving specified details of the application and notifying the persons who work there that any of them may make written representations to the exempting authority within fourteen days; the notice must be kept posted throughout the period of fourteen days and a failure to comply with these requirements is made an offence with a maximum penalty of £20. The enforcing authority may, under sub-s. (7), withdraw an exemption if they are satisfied that the reasons for the grant or extension are no longer valid, provided that three months' notice is given to the person who would be responsible if the exemption were not in force. The enforcing authority must, by sub-s. (8), send a certificate of the grant or extension of an exemption to the person who would be responsible if the exemption were not in force, and that person must, by sub-s. (9), keep the certificate permanently posted on the premises. When an exemption is refused, sub-s. (10) provides that the enforcing authority must give notice to the applicant and to any workers, or persons representative of them, who made representations to the authority. Sub-s. (11) provides that a person aggrieved by a refusal to grant or extend an exemption or by a notice of intention to withdraw an exemption may, within twenty-one days, appeal to a magistrates' court. Sub-s. (12) enables an exemption from a provision of s. 5 (2), 6, 9 or 10 (1), *ante*, to be applied for and granted notwithstanding that the provision is not yet in force in relation to the premises, provided that a day has been appointed for that purpose under s. 91 (2), *post*. Sub-s. (13) provides that where an application is made with respect to premises, in a building to which s. 42 or s. 43, *ante*, applies the notice required by sub-s. (6) may be posted on the premises or in a common part of the building. Sub-s. (14) defines the "appropriate authority" to whom application is to be made under sub-s. (5).

Sub-s. (1): Authority having power to enforce, etc. See s. 52, *post*.

Reasonably practicable. See the note to s. 6 (3), *ante*, where the effect of these words on tortious liability is discussed. Although the exempting authority would clearly not be bound by the cases there cited, it is submitted that those cases would become relevant on an appeal under sub-s. (10).

Sub-s. (3): Person who . . . would be responsible, etc. The person responsible for a contravention of s. 5 (2), *ante*, or s. 6, *ante*, would be the occupier of the premises, and the person responsible for a contravention of s. 9, *ante*, or s. 10, *ante*, would be the occupier of the premises or, in certain cases, the owner of the building or one of the persons who between them own the building; see s. 63, *post*, in conjunction with ss. 42 (6), (7), 43 (4), (5), *ante*.

Sub-s. (5): Person who would be responsible, etc. See the note "Person who . . . would be responsible, etc." above.

Beginning. Cf. the note to s. 5, *ante*.

Sub-s. (7): Three months' notice, etc. The period of three months is to be calculated exclusive of the day on which the notice was given and the day on which the notice is withdrawn; see, in particular, *R. v. Turner*, [1910] 1 K.B. 346; *Re Hector Whaling, Ltd.*, [1936] Ch. 208; [1935] All E.R. Rep. 302; and *Thompson v. Stimpson*, [1960] 3 All E.R. 500; [1961] 1 Q.B. 195, C.A.

Sub-s. (8): Shall be sent. For provisions as to sending documents, see s. 81, *post*.

Sub-s. (10): Notice . . . shall be given, etc. For provisions as to giving notices, see s. 81, *post*.

Appearing; appear. Cf. the note "Appears" to s. 20, *ante*.

Sub-s. (11): Person . . . aggrieved; within twenty-one days; appeal. See the notes to s. 31, *ante*.

May order, etc. See the note "May make such order, etc." to s. 31, *ante*.

Sub-s. (12): Order has been made, etc. See s. 91 (2), *post*; and see also s. 90 (5), *post*.

Sub-s. (13): Building to which s. 42 or 43 . . . applies; common part of the building. See ss. 42 (1), 43 (1), *ante*.

Appearing; appear. Cf. the note "Appears" to s. 20, *ante*.

Crown. For application of this section to the Crown, see s. 83 (4), *post*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 86, *post*; and note sub-s. (6) of this section.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "contravention", "factory inspector", "magistrates' court", "the Minister", "mine and quarry inspector", "notice" and "petty sessions area", see s. 90 (1), *post*; for "employed", see s. 90 (1), (4), *post*. See also as to "... work in the premises", s. 90 (3), *post*; and note, as to "appropriate authority", sub-s. (14) of this section.

Order under this section. No order had been made by the Minister under this section up to 14th October 1963.

For provisions as to orders by the Minister, see s. 81, *post*.

Prohibition of Levying of Charges on Employees for Things done in Compliance with Act

47. Prohibition of levying of charges on employees for things done in compliance with Act.—If the owner or the occupier of premises to which this Act applies or a person who employs persons to work therein levies, or suffers to be levied, upon a person so employed, any charge in respect of anything done or provided in pursuance of this Act or regulations thereunder, he shall be guilty of an offence.

NOTES

General effect of section. This section makes it an offence for any charge to be levied on employees for anything done or provided in compliance with the Act or regulations.

This section may be compared with s. 136 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 376 and Redgrave's Factories Acts (20th Edn.) p. 353).

Occupier. See the note to s. 22, *ante*.

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Offence. For further provisions, see ss. 64 *et seq.*, 70, 86 (1), *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "owner", see s. 90 (1), *post*. See also as to "... work therein", s. 90 (3), *post*.

Notification of Accidents

48. Notification of accidents.—(1) Where an accident in any premises to which this Act applies—

- (a) causes loss of life to a person employed to work in the premises; or
- (b) disables any such person for more than three days from doing his usual work;

notice of the accident, in such form as may be prescribed by order made by the Minister and accompanied by such particulars as may be so prescribed, shall forthwith be sent by the occupier of the premises to the appropriate authority unless notice of the accident is required to be given under or by virtue of any other enactment.

(2) Where an accident causing disablement is notified under this section, and after notification thereof results in the death of the person disabled, notice of the death shall, as soon as it comes to the knowledge of the occupier of the premises in which the accident occurred, be sent by him to the appropriate authority.

(3) Where an accident to which this section applies occurs to a person employed to work in any premises to which this Act applies and the occupier of the premises is not the actual employer of the person killed or disabled, the actual employer shall, if he fails to report the accident to the occupier immediately, be guilty of an offence and liable to a fine not exceeding ten pounds.

(4) The Minister may by regulations made as respects premises to which this Act applies, or any class of such premises, give either or both of the following directions, namely,—

- (a) a direction that, as respects accidents of such class as may be specified in the regulations, subsection (1) of this section shall have effect as if paragraph (b) had been omitted;
- (b) a direction that, as respects accidents of such class as may be so specified, that subsection shall have effect as if, in the said paragraph (b), for the reference to three days there had been substituted a reference to such other period (whether longer or shorter) as may be so specified.
- (5) In this section "appropriate authority", in relation to any premises,—
 - (a) where the authority having, by virtue of section 52 of this Act, power to enforce sections 4 to 27 of this Act with respect to the premises is other than a factory inspector, a mine and quarry inspector or a person authorised under subsection (3) or (6) of that section, means that authority;
 - (b) where the authority having, by virtue of the said section 52, power to enforce sections 4 to 27 of this Act with respect to the premises is a factory inspector or a person authorised under section 52 (3) of this Act, means the factory inspector in charge of the district in which the premises are situate;
 - (c) where the authority having, by virtue of the said section 52, power to enforce sections 4 to 27 of this Act with respect to the premises is a mine and quarry inspector or a person authorised under section 52 (6) of this Act, means the mine and quarry inspector in charge of the district in which the premises are situate.

NOTES

General effect of section. This section provides for the notification to the appropriate authority of any accident in premises within the Act which causes the death, or disablement for more than three days, of any person employed. Sub-s. (2) requires subsequent notification of a death following a notified disablement to be made as soon as it comes to the knowledge of the occupier, and sub-s. (3) provides that where the occupier is not the actual employer the latter commits an offence if he fails immediately to report any such accident to the occupier. Sub-s. (4) enables the Minister to direct, either generally or in relation to any class of premises, that in any specified class of accident only death is to be notifiable or that the period of disablement which renders an accident notifiable is to be longer or shorter than three days. Sub-s. (5) defines the "appropriate authority" to whom notification is to be sent.

This section may be compared with s. 80 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 320 and Redgrave's Factories Acts (20th Edn.) p. 201).

Sub-s. (1): Accident. This word must be given its ordinary meaning (see *Fenton v. Thorley & Co., Ltd.*, [1903] A.C. 443, decided under the Workmen's Compensation Act 1897).

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Sent. For provisions as to sending notices, see s. 81, *post*, and the enactments cited in the note "Local authorities" to that section.

Occupier. See the note to s. 22, *ante*.

Offences. For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1), *post*; and note sub-s. (3) of this section.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see also ss. 61, 83 (5), *post*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "factory inspector", "the Minister", "mines and quarry inspector" and "notice", see s. 90 (1), *post*. See also as to "... work in the premises", s. 90 (3), *post*, and note, as to "appropriate authority", sub-s. (5) of this section.

Order and regulations under this section. No order and no regulations had been made under this section up to 14th October 1963.

For provisions as to orders and regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

Information

49. Notification of fact of employment of persons.—(1) Before a person first begins, after the coming into operation of this subsection with respect to any office, shop or railway premises, to employ persons to work therein, he shall serve on the appropriate authority two copies of a notice

stating that persons will be employed by him so to work and containing such other (if any) information as may be prescribed by order of the Minister, being a notice in such form and of such size as may be so prescribed.

(2) Where, at the date of coming into force of this section with respect to any office, shop or railway premises, a person is employing persons to work therein he shall, before the expiration of such period beginning with that date as may be prescribed by order made by the Minister, serve on the appropriate authority two copies of a notice stating that fact and containing such other (if any) information as may be so prescribed, being a notice in such form and of such size as may be so prescribed.

(3) A person who fails to comply with an obligation to which he is subject by virtue of either of the foregoing subsections shall be guilty of an offence and liable to a fine not exceeding twenty pounds.

(4) Proceedings for an offence under this section may be commenced at any time within twelve months from the time when the offence was committed.

(5) In this section "appropriate authority" has the same meaning as in the last foregoing section.

NOTES

General effect of section. This section requires an employer to notify the appropriate authority (defined as in s. 48 (5), *ante*), before beginning to employ persons in premises within the Act or, where persons are already so employed at the date this section comes into force, to do so within such period as the Minister may prescribe. By sub-s. (3) failure to comply with this section renders the employer liable to a fine not exceeding £20, and sub-s. (4) enables proceedings to be taken within twelve months of the offence.

This section may be compared with s. 137 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 376 and Redgrave's Factories Acts (20th Edn.) p. 353).

Sub-s. (1): Coming into operation of this subsection. See s. 91 (2), *post*.

Office, shop or railway premises. See ss. 1 to 3, *ante*.

Persons. Cf. the note to s. 1, *ante*.

Shall serve. For provisions as to service of notices, see s. 81, *post*.

Sub-s. (2): Coming into force of this section. See s. 91 (2), *post*.

Shall serve. For provisions as to service, see s. 81, *post*, and the notes thereto.

Beginning. Cf. the note to s. 5, *ante*.

Sub-s. (3): Guilty of an offence and liable, etc. For further provisions, see ss. 65 *et seq.*, 70, 86, *post*; and note sub-s. (4) of this section. See also s. 68 (1), *post*.

Sub-s. (4): Proceedings . . . may be commenced, etc.; within twelve months. See the notes to s. 20, *ante*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see ss. 61, 83 (5), *post*.

Definitions. By virtue of sub-s. (5) of this section, for "appropriate authority", see s. 48 (5), *ante*. For "employed", see s. 90 (1), (4), *post*; for "the Minister" and "notice", see s. 90 (1), *post*; for "office premises", see s. 1 (2), (5), *ante*; for "railway premises", see s. 1 (4), (5), *ante*; for "shop premises", see s. 1 (3), (5), *ante*. See also, as to "... work therein", s. 90 (3), *post*.

Order under this section. No order had been made under this section up to 14th October 1963.

For provisions as to orders, see s. 80, *post*.

50. Information for employees.—(1) The Minister may by regulations require the taking of such steps as may be prescribed by the regulations for the purpose of securing that persons employed to work in premises to which this Act applies, or in any class of such premises as may be specified in the regulations, are informed of the effect of this Act and the regulations thereunder or, as the case may be, of the effect of so much of this Act and the regulations thereunder as has effect in relation to premises of that class.

(2) Without prejudice to the generality of the foregoing subsection, the steps that may be required by virtue thereof to be taken may include the posting in premises of such abstracts of, or of parts of, this Act and the regulations thereunder as may be prescribed by the regulations and the giving to

persons employed to work in premises of books or leaflets explanatory of, or of parts of, this Act and the regulations thereunder, being books or leaflets prepared under the auspices of the Minister.

(3) Different provision may be made by regulations under this section in relation to premises of different classes.

(4) A person who contravenes a provision of regulations under this section shall be guilty of an offence.

NOTES

General effect of section. Sub-s. (1) enables the Minister to make regulations prescribing the steps to be taken to inform employees of the effect of the Act and regulations thereunder; by sub-s. (2), such steps may include the posting of abstracts and the giving to employees of explanatory books or leaflets prepared by the Minister.

This section may be compared with s. 138 (1)–(3) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 377 and Redgrave's Factories Acts (20th Edn.) p. 355).

Sub-s. (1): Persons. Cf. the note to s. 1, *ante*.

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Offence. For further provisions, see ss. 65 *et seq.*, 70, 86 (1), *post*. See also s. 69, *post*.

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see ss. 61, 83 (5), *post*.

Definitions. For "contravene" and "the Minister", see s. 90 (1), *post*; for "employed", see s. 90 (1), (4), *post*. See also as to "... work in premises", etc., s. 90 (3), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*; and see also s. 90 (5), *post*.

Power to adapt Act in relation to covered Markets

51. Power to adapt Act in relation to covered markets.—(1) The Minister may by special regulations direct, in the case of premises consisting of a covered market place wherein shop premises are aggregated,—

- (a) that such of the foregoing provisions of this Act as may be specified in the regulations shall not apply to the premises aggregated in the market place;
- (b) that such of the said provisions as may be so specified shall in their application to the premises so aggregated have effect subject to such modifications as may be so specified;
- (c) that such of the said provisions as may be so specified shall not apply to the premises so aggregated but shall (subject to such, if any, modifications as may be so specified) apply to the market place and that, in the event of a contravention of a provision applied by virtue of this paragraph, such person as may be so specified shall be guilty of an offence.

(2) In this section the expression "covered market place" shall be construed generally and not as limited to a place where a market is held by virtue of a grant from the Crown or of prescription or under statutory authority.

NOTES

General effect of section. This section enables the Minister, by special regulations, to limit or modify the Act in its application to shops aggregated in a covered market.

Sub-s. (1): Special regulations. As to the making of special regulations, see s. 80 (8) and Sch. 1, *post*.

Offence. For further provisions, see ss. 64 *et seq.*, 70, 86 (1), *post*.

Sub-s. (2): Shall be construed generally, etc. *I.e.*, given their usual and ordinary meaning without reference to the legal definition of a "market".

Enforcement, etc. For provisions as to enforcement, etc., see ss. 52 *et seq.*, *post*; and see ss. 61, 83 (5), *post*.

Definitions. For "contravention" and "the Minister", see s. 90 (1), *post*; for "shop premises", see s. 1 (3), (5), *ante*. Note as to "covered market place", sub-s. (2) of this section.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

Enforcement

52. Authorities who are to enforce Act.—(1) It shall be the duty of every local authority to enforce within their area (and for that purpose to appoint inspectors) the foregoing provisions of this Act and regulations thereunder—

- (a) except sections 28 to 38 and regulations under any of them; and
- (b) except, as regards any other section or regulations, in a case for which provision for the enforcement of that section or those regulations is made by the following provisions of this section.

(2) It shall be the duty of the authority discharging in any area the functions of fire authority under the Fire Services Act 1947 to enforce within that area (and for that purpose to appoint inspectors) sections 28 to 38 of this Act and regulations under any of those sections, subject, however, to the following qualifications:—

- (a) they shall not have the duty to enforce those sections and regulations with respect to premises falling within subsection (3) of this section;
- (b) they shall not have the duty to enforce, with respect to premises falling within subsection (4) or (6) of this section, sections 33, 34 or 36, regulations under section 37, section 38 (1) or regulations under section 38 (2).

(3) The foregoing provisions of this Act and regulations thereunder shall, as regards,—

- (a) premises occupied by the council of a county;
- (b) premises occupied by a local authority;
- (c) premises provided and maintained by the council of a county for purposes connected with the administration of justice or provided and maintained by a local authority for such purposes;
- (d) premises comprised in premises used for the purposes of a school which, within the meaning of the Education Act 1944, is maintained by a local education authority;
- (e) premises occupied by a probation committee constituted under the Criminal Justice Act 1948 or the Criminal Justice (Scotland) Act 1949;
- (f) premises occupied by a fire authority constituted by a combination scheme made under the Fire Services Act 1947;
- (g) premises occupied by a police authority or the receiver for the metropolitan police district; and
- (h) premises occupied by the United Kingdom Atomic Energy Authority;

be enforceable by factory inspectors and such persons (other than factory inspectors) as the Minister may authorise in that behalf.

(4) The foregoing provisions of this Act and regulations thereunder (except sections 28, 29 and 30 and regulations under section 35) shall, as regards—

- (a) premises which are not, for the purposes of the Factories Act 1961, a factory but which, but for the operation of section 175 (6) of that Act, would, for the purposes of that Act, form part of a factory, not being premises contained in office or shop premises;
- (b) premises to which section 26 of this Act applies;
- (c) premises which, but for the following provisions of this Act, would, for the purposes of section 123 (1), 124 (1) or 125 (1) of the Factories Act 1961, form part of premises to which, as the case may be, the said section 123 (1), the said section 124 (1) or the said section 125 (1) applies, but not including such a building or part of a building as, by virtue of those provisions, is excluded from the said section 125 (1);

- (d) railway premises;

(e) office premises occupied by railway undertakers for the purposes of the railway undertaking carried on by them and situate in the immediate vicinity of the permanent way (not being office premises comprised in hotels); and

(f) fuel storage premises owned by railway undertakers;

not being, in any of those cases, premises falling within subsection (3) of this section, be enforceable by factory inspectors and persons authorised under that subsection.

(5) It shall be the duty of the London County Council, as regards office or shop premises forming part of a place of public entertainment within the administrative county of London other than such a place occupied by them, to enforce (and for that purpose to appoint inspectors) the foregoing provisions of this Act and regulations thereunder, other than provisions or regulations which it is their duty to enforce in their capacity of a fire authority under the Fire Services Act 1947.

(6) The foregoing provisions of this Act and regulations thereunder (except sections 28, 29 and 30 and regulations under section 35) shall, as regards office or shop premises which, for the purposes of the Mines and Quarries Act 1954, form part of a mine or quarry, be enforceable by mine and quarry inspectors and such persons (other than mine and quarry inspectors) as the Minister of Power may authorise in that behalf.

(7) Nothing in the provisions of this section charging any authority in Scotland with the enforcement of this Act or regulations thereunder shall be construed as authorising that authority to institute proceedings for any offence.

NOTES

As from 1st April 1965, in sub-s. (3) (a) after the word "county" are inserted the words "or the Greater London Council" and in sub-s. (5) for the words "administrative county of London" are substituted the words "Greater London" by the London Government Act 1963, s. 51 (2); and by *ibid.*, s. 51 (1) in sub-s. (5) for the words "London County Council" are substituted the words "Greater London Council".

General effect of section. By sub-s. (1) local authorities are given the duty of enforcing the foregoing provisions of the Act, save for ss. 28–38, *ante*, which, by sub-s. (2), are to be enforced by fire authorities. Both local and fire authorities are to appoint inspectors, and certain classes of premises specified in sub-ss. (3), (4) and (6) are excluded from their jurisdiction. Sub-s. (3) specifies the classes of premises with regard to which the whole Act is to be enforced by factory inspectors or persons authorised by the Minister and sub-s. (4) specifies other classes of premises with regard to which such inspectors, or authorised persons are to enforce the whole Act except ss. 28, 29 and 30 and regulations under s. 35. Sub-s. (5) requires the London County Council to enforce the Act with regard to offices and shops forming part of a place of public entertainment in the administrative county of London. Sub-s. (6) makes the Act, except ss. 28, 29 and 30 and regulations under s. 35, *ante*, enforceable by mine or quarry inspectors or persons authorised by the Minister of Power with regard to offices and shops forming part of a mine or quarry. See also as to London, the first note, *supra*.

Sub-s. (1): It shall be the duty, etc. The Public Health Act 1936, ss. 322–325 (19 Halsbury's Statutes (2nd Edn.) 483 *et seq.*) (which relate to default powers), and the Local Government Act 1933, s. 290 (2)–(5) (14 Halsbury's Statutes (2nd Edn.) 503, 504) (which relate to inquiries), are, subject to modifications, deemed to be incorporated or are applied, so far as England and Wales are concerned, by s. 61, *post.* As s. 322 (1) of the Act of 1936, as so incorporated and modified, provides for a complaint to the Minister, no *mandamus* will issue at the instance of a private person to compel an authority to fulfil their duties under the present section; cf. *Pasmore v. Oswaldtwistle Urban District Council*, [1898] A.C. 387; [1895–9] All E.R. Rep. 191. Yet, where the authority do not comply with an order under s. 322 (2) of the Act of 1936, as so incorporated and modified, *mandamus* will certainly lie at the instance of the Minister; see s. 322 (3) of that Act, as so incorporated and modified. Moreover, there is authority for saying that *mandamus* will be granted at the instance of the Minister in every case where the authority are in default; see *R. v. Leicester Union*, [1899] 2 Q.B. 632.

Appoint inspectors. For powers of inspectors so appointed, see s. 53, *post.*; and see also s. 55, *post.* See, further, as to protection of inspectors appointed under sub-s. (1) or sub-s. (5) of this section, s. 58, *post.*

Sub-s. (3): Receiver for the Metropolitan Police District. The Receiver for the Metropolitan Police District is appointed under the Metropolitan Police Act 1829,

s. 10 (18 Halsbury's Statutes (2nd Edn.) 18). He is a corporation sole by virtue of the Metropolitan Police (Receiver) Act 1861, s. 1 (18 Halsbury's Statutes (2nd Edn.) 83).

Factory inspectors and such persons, etc. For powers of factory inspectors and persons authorised by the Minister, see s. 53, *infra*; and see also s. 55, *post*. See further, s. 39, *ante*.

Sub-s. (5): London County Council; administrative county of London. See the notes to s. 41, *ante*, and the first note, *supra*.

Sub-s. (6): Mine and quarry inspectors and such persons, etc. For the powers of mine and quarry inspectors and persons authorised by the Minister of Power, see the Mines and Quarries Act 1954, s. 145 (101 Statutes Supp. 157), in conjunction with s. 54, *post*; and see also s. 39 (1), *ante* and s. 56 (2), *post*.

Crown. For application of this section to the Crown, see s. 83 (5), *post*.

Inner and Middle Temples. For the application of this section to the Inner Temple and the Middle Temple, see s. 89 (3), *post*.

Definitions. For "building", "factory inspector", "the Minister", "mine and quarry inspector", "place of public entertainment", "police authority" and "railway undertakers", see s. 90 (1), *post*; for "fuel storage premises" and "shop premises", see s. 1 (3), (5), *ante*; for "local authority", see ss. 89 (1), 90 (1), *post*; for "office premises", see s. 1 (2), (5), *ante*; for "railway premises", see s. 1 (4), (5), *ante*.

Fire Services Act 1947. For the provisions of that Act as to fire authorities (including combination schemes), see ss. 4 *et seq.* thereof (44 Statutes Supp. 47 *et seq.*). See also, as to the discharge of functions of fire authorities through other fire authorities or persons, s. 12 of that Act (44 Statutes Supp. 54).

Education Act 1944. For the meaning of "maintain" in that Act, see s. 114 (2) (a) thereof (8 Halsbury's Statutes (2nd Edn.) 238).

Criminal Justice Act 1948. Probation committees are constituted under s. 45 of, and Sch. 5 to, that Act (28 Halsbury's Statutes (2nd Edn.) 384, 404).

Criminal Justice (Scotland) Act 1948. 12, 13 & 14 Geo. 6 c. 94.

Factories Act 1961. See 41 Halsbury's Statutes (2nd Edn.) 239. For ss. 123 (1), 124 (1), 125 (1) and 175 (6) of that Act, see 41 Halsbury's Statutes (2nd Edn.) 359, 360, 361, 403.

Mines and Quarries Act 1954. For the meanings of "mine" and "quarry" in that Act and the premises which form part of a mine or quarry for the purposes of that Act, see s. 180 thereof (101 Statutes Supp. 194).

53. Powers of local authorities' and Minister's inspectors.—

(1) Any such person as follows (hereafter in this section referred to as an "inspector"), namely, an inspector appointed under subsection (1), (2) or (5) of the last foregoing section, a factory inspector and a person authorised by the Minister under subsection (3) of that section, shall, for the purpose of the execution of this Act, have power to do all or any of the following things, namely,—

(a) at any reasonable time to enter any such premises as the following, and to inspect the whole or any part thereof and anything therein, that is to say:—

- (i) any premises to which this Act applies;
- (ii) any premises (other than as aforesaid) in which any conveniences, facilities or other thing are or is provided in pursuance of this Act or regulations thereunder;
- (iii) any premises which, for the purposes of section 42 or 43 of this Act constitute a common part of a building to which the said section 42 or, as the case may be, the said section 43, applies;
- (iv) any premises falling within section 51 of this Act;
- (v) any premises which he has reasonable cause to believe to be premises falling within any of the foregoing sub-paragraphs; and
- (vi) any premises with respect to which he has reasonable cause to believe that materials of a kind prescribed by virtue of section 29 (1) (c) of this Act are therein used or are therein stored in a quantity not less than that so prescribed, being premises situate underneath premises to which this Act applies;

- (b) to make such examination and inquiry as may be necessary—
- (i) to ascertain whether, so far as regards any such premises as aforesaid or conveniences, facilities or other things therein provided, the provisions of this Act and regulations thereunder are complied with; or
 - (ii) to verify any belief that he has formed that any premises fall within sub-paragraph (i), (ii), (iii) or (iv) of paragraph (a) above or that, in premises situate as mentioned in sub-paragraph (vi) of that paragraph, materials of a kind therein mentioned are used or are stored as so mentioned; or
 - (iii) to identify the owner or occupier of any premises falling within sub-paragraph (i), (ii), (iii) or (iv) of paragraph (a) above;
- (c) on entering any premises to take with him a constable if he has reasonable cause to apprehend any serious obstruction in the exercise of the powers conferred on him by this subsection;
- (d) for the purpose of any examination or inquiry under the foregoing provisions of this subsection to require any person whom he finds in any such premises as are mentioned in paragraph (a) above or whom he has reasonable cause to believe to be, or to have within the preceding two months been, employed to work in any such premises, to answer (in the absence of persons other than any whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers, so, however, that no answer given by a person in pursuance of a requirement imposed under this paragraph shall be admissible in evidence against him in any proceedings;
- (e) to require the production of, and to inspect, any fire certificate in force with respect to any premises to which this Act applies;
- (f) to require any person having responsibilities in relation to any such premises as are mentioned in paragraph (a) above (whether or not the owner or occupier of the premises or a person employed to work therein) to give him such facilities and assistance with respect to any matters or things to which the responsibilities of that person extend as are necessary for the purpose of enabling the inspector to exercise any of the powers conferred on him by this subsection;
- (g) to exercise such other powers as may be necessary for carrying this Act into effect.
- (2) A person who—
- (a) fails to comply with any requirement imposed by an inspector under the foregoing subsection; or
 - (b) prevents, or attempts to prevent, any other person from appearing before an inspector or from answering any question to which an inspector may, by virtue of the foregoing subsection, require an answer; or
 - (c) obstructs an inspector in the exercise or performance of his powers or duties;

shall be guilty of an offence and liable to a fine not exceeding twenty pounds.

NOTES

General effect of section. Sub-s. (1) of this section confers on local authorities' inspectors and on factory inspectors and persons authorised by the Minister when carrying out their duties under this Act power to enter premises within the Act and certain other premises and to make any necessary examinations and enquiries. Sub-s. (2) makes it an offence to fail to co-operate with or to obstruct such an inspector. This section may be compared with s. 146 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 383 and Redgrave's Factories Acts (20th Edn.) p. 366).

Sub-s. (1): To enter any such premises. *Prima facie*, a statutory power of entry is a power, if necessary, of forcible entry (*Grove v. Eastern Gas Board*, [1951] 2 All E.R. 1051).

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Common part of a building, etc. See ss. 42 (1), 43 (1), *ante*.

Reasonable cause to believe. The meaning of these words in any enactment is a matter of construction in each case but "however read, they must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power" (*Nakkuda Ali v. Jayaratne* (M. F. de S.), [1951] A.C. 66, P.C.). In the present context no doubt there must be both a belief and facts known to the inspector upon which that belief is reasonably founded; see *R. v. Banks*, [1916] 2 K.B. 621; [1916-17] All E.R. Rep. 356, C.C.A.; *Nakkuda Ali v. Jayaratne* (M. F. de S.), *supra*. The question whether the facts proved amount to reasonable cause for the belief is a matter of law (*Lister v. Perryman* (1870), L.R. 4 H.L. 521).

Occupier. See the note to s. 22, *ante*.

Reasonable cause to apprehend. Cf. the note "Reasonable cause to believe", above.

Sub-s. (2): Prevents. See the note to s. 42, *ante*.

Attempts. On what constitutes an attempt, see, in particular, *R. v. Laitwood* (1910), 4 Cr. App. Rep. 248 and *R. v. Miskell*, [1954] 1 All E.R. 137; and see also *R. v. Percy Dalton* (London), Ltd., [1949] L.J.R. 1626, C.C.A.

Prevent. See the note "Prevents" to s. 42, *ante*.

In the exercise or performance, etc. What is meant is clearly the exercise or performance of powers or duties under the Act. The purported exercise or performance is not sufficient; cf. *Davis v. Lisle*, [1936] 2 All E.R. 213; [1936] 2 K.B. 434; and contrast s. 58 (1), *post*.

Guilty of an offence and liable, etc. For further provisions, see ss. 65 *et seq.*, 70, *post*.

Crown. For application of this section to the Crown, see s. 83 (5), *post*.

Inner and Middle Temples. For the application of this section to the Inner and Middle Temples, see s. 89, *post*.

Production of evidence of authority. For provisions as to the production of evidence of authority by inspectors, see s. 55, *post*.

Extensions. The scope of this section is extended by ss. 56 (1) (see also s. 56 (4)) and 57 (4), *post*.

Definitions. For "building", "factory inspector", "the Minister" and "owner", see s. 90 (1), *post*; for "employed", see s. 90 (1), (4), *post*. See also as to "... work ...", s. 90 (3), *post*; and note, as to "inspector", sub-s. (1) of this section.

54. Powers of Minister of Power's inspectors.—(1) Section 145 of the Mines and Quarries Act 1954 shall have effect as if references therein to that Act included references to the foregoing provisions of this Act.

(2) A person authorised under section 52 (6) of this Act by the Minister of Power shall, for the purpose of the enforcement, with respect to such office or shop premises as are mentioned in that subsection, of this Act and regulations thereunder have the like powers as are conferred on mine and quarry inspectors by the provisions of section 145 (1) of the Mines and Quarries Act 1954 as extended by the foregoing subsection (other than the provisions of sub-paragraphs (b) (ii) and (d) (ii) and (iii) and paragraph (f)); and section 145 (2) of that Act (obstruction, &c., of inspectors) shall, with requisite modifications, apply accordingly.

NOTES

General effect of section. Sub-s. (1) enables mine and quarry inspectors to exercise the same powers of entry, examination and inquiry in enforcing this Act as they may under s. 145 of the Mines and Quarries Act 1954 (101 Statutes Supp. 157) (which are similar to those conferred on other inspectors by s. 53, *ante*). Sub-s. (2) confers the same powers, with minor exceptions immaterial to the enforcement of this Act, upon persons authorised by the Minister of Power under s. 52 (6), *ante*, and makes it an offence under s. 145 (2) of the Mines and Quarries Act 1954 to fail to co-operate with or to obstruct such persons.

Definitions. For "mine and quarry inspector", see s. 90 (1), *post*; for "office premises", see s. 1 (2), (5), *ante*; for "shop premises", see s. 1 (3), (5), *ante*.

Mines and Quarries Act 1954, s. 145. See 101 Statutes Supp. 157.

55. Production by local authorities' and Minister's inspectors of evidence of authority.—A person who is an inspector within the meaning of section 53 of this Act shall, if so required when visiting any premises in

exercise of powers conferred by that section, produce to the occupier of the premises—

- (a) if he is a factory inspector, the certificate of appointment issued to him under section 150 of the Factories Act 1961;
- (b) if he is a person appointed under section 52 (1), (2) or (5) of this Act, some duly authenticated document showing that he is so appointed;
- (c) if he is a person authorised under section 52 (3) of this Act by the Minister, some duly authenticated document showing that he is so authorised.

NOTES

General effect of section. This section requires an inspector to produce, if required, documentary evidence of his authority. It may be compared with s. 150 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 386 and Redgrave's Factories Acts (20th Edn.) p. 371).

Shall, if so required, etc. The right of entry may be exercised even though there is nobody on the premises to whom the document can be produced; cf. *Grove v. Eastern Gas Board*, [1951] 2 All E.R. 1051; [1952] 1 K.B. 77, C.A.

Occupier. See the note to s. 22, *ante*.

Definitions. For "factory inspector" and "the Minister", see s. 90 (1), *post*.

Factories Act 1961, s. 150. See 41 Halsbury's Statutes (2nd Edn.) 386.

56. Exercise, on behalf of factory and mine and quarry inspectors, of their powers by officers of fire brigades.—(1) The like powers as are conferred by section 53 of this Act on a factory inspector shall be exercisable, in relation to any premises, by an officer of the appropriate fire brigade when authorised in writing by such an inspector for the purpose of reporting to the inspector on any such matter falling within the inspector's duties under this Act with respect to the premises as relates to fire; and subsection (2) of that section shall, with requisite modifications, apply accordingly.

(2) The like powers as are conferred by section 54 (2) of this Act on a person authorised under section 52 (6) thereof shall be exercisable, in relation to any premises, by such an officer as aforesaid when authorised in writing by a mine and quarry inspector for the purpose of reporting to the inspector on any such matter falling within the inspector's duties under this Act with respect to the premises as relates to fire; and section 145 (2) of the Mines and Quarries Act 1954 shall, with requisite modifications, apply accordingly.

(3) An officer exercising any power conferred by this section shall, if asked so to do, produce his authority.

(4) Neither a factory inspector nor a mine and quarry inspector shall authorise an officer of a fire brigade to enter and inspect any premises except with the consent of the authority maintaining the brigade.

(5) In this section "appropriate fire brigade" means, in relation to any premises, the fire brigade maintained by the authority discharging in the area in which the premises are situate the functions of fire authority under the Fire Services Act 1947.

NOTES

General effect of section. By sub-s. (1), an officer of the appropriate fire-brigade, when authorised by a factory inspector to enter and inspect any premises for the purpose of reporting to the inspector on fire matters, is given the same power as a factory inspector; see s. 53, *ante*. By sub-s. (2) such an officer when similarly authorised by a mine and quarry inspector is given the same powers as a person authorised by the Minister of Power under s. 52 (6), *ante*; see s. 54 (2), *ante*. Sub-s. (3) provides that such an officer must, if asked to do so, produce his authority. Sub-s. (4) requires a factory or mine and quarry inspector to obtain the fire authority's consent before authorising a fire officer to make such an inspection, and sub-s. (5) defines "appropriate fire brigade".

Sub-s. (3): Shall, if asked so to do, etc. Cf. the note "Shall, if so required, etc." to s. 55, *supra*.

Definitions. For "factory inspector" and "mine and quarry inspector", see s. 90 (1), *post*. Note, as to "appropriate fire brigade", sub-s. (5) of this section.

Mines and Quarries Act 1954, s. 145 (2). See 101 Statutes Supp. 159.

Fire Services Act 1947. See the note to s. 52, *ante*.

57. Provisions for securing discharge of local authorities' duties in uniform manner.—(1) For the purpose of securing that the duties under this Act of local authorities and the London County Council with respect to the enforcement of the foregoing provisions of this Act and regulations thereunder (except sections 28 to 38, and regulations under any of them) are discharged in uniform manner, the Minister—

(a) may make regulations with respect to the manner of the discharge of those duties and of the exercise of the powers conferred by this Act on inspectors appointed by local authorities and the London County Council respectively;

(b) may, with the approval of the Treasury as to numbers and salaries, appoint officers to be charged with the duty of securing that he is at all material times in possession of all information requisite to enable him to determine whether those duties are being so discharged and of advising local authorities and the London County Council on matters concerning the discharge by them of those duties.

(2) An officer appointed under this section may inquire into the manner in which the duties aforesaid are for the time being discharged by a local authority or the London County Council and, for that purpose, may—

(a) examine any records kept in connection with the discharge of those duties by the authority or Council;

(b) require the authority or Council or an inspector appointed by them in pursuance of this Act to give such assistance and information as the officer may reasonably specify; and

(c) make inquiries of any person who appears to the officer likely to be able to give him information with respect to the manner in which the duties aforesaid are for the time being discharged by the authority or Council.

(3) The results of an inquiry under the last foregoing subsection shall, if the Minister so directs, be reported to him in writing by the officer by whom it was carried out; and where that is done, the Minister shall send a copy of the report to the local authority in question (or to the London County Council, in a case where the subject of the inquiry was the manner in which their duties were for the time being discharged) and may, if he thinks fit, publish it in whole or in part.

(4) The like powers as, by section 53 of this Act, are conferred on an inspector within the meaning of that section shall be exercisable by an officer appointed under this section; and subsection (2) of that section shall, with requisite modifications, apply accordingly.

(5) An officer appointed under this section shall, if so required when visiting any premises in exercise of powers conferred by the foregoing subsections, produce to the occupier of the premises some duly authenticated document showing that he is so appointed.

NOTES

As from 1st April 1965, for the words "London County Council" are substituted the words "Greater London Council" by the London Government Act 1963, s. 51 (1).

General effect of section. Sub-s. (1) enables the Minister to make regulations and to appoint officers to ensure that local authorities and the London County Council carry out their duties of enforcement in uniform manner. Sub-s. (2) empowers an officer so appointed to examine records and make enquiries. If the Minister directs such an officer to report to him in writing, sub-s. (3) requires a copy to be sent to the local authority and enables the Minister to publish it in whole or in part. Sub-s. (4) confers on such an officer the like powers as are conferred on inspectors under s. 53,

ante, and sub-s. (4) requires him to produce documentary evidence of his authority, if so required. See also as to London, the first note, *supra*.

Sub-s. (1): London County Council. See the note to s. 41, *ante*, and the first note, *supra*.

Sub-s. (5): Shall, if so required, etc. See the note to s. 55, *ante*.

Occupier. See the note to s. 22, *ante*.

Definitions. For "local authority", see ss. 89 (1), 90 (1), *post*; for "the Minister", see s. 90 (1), *post*.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations, see s. 80, *post*.

58. Power of local authorities to indemnify their inspectors.—

Where an action has been brought against an inspector appointed under section 52(1) or (5) of this Act in respect of an act done by him in the execution or purported execution of this Act and the circumstances are such that he is not legally entitled to require the authority by whom he was appointed to indemnify him, the authority may, nevertheless, indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if they are satisfied that he honestly believed that the act complained of had been within the scope of his employment and that his duty under this Act required or entitled him to do it.

NOTES

General effect of section. Sub-s. (1) provides that an inspector appointed by a local authority or the London County Council shall not be personally liable for an act done in the honest belief that his duty under the Act required or entitled him to do that act, but does not relieve the authorities of vicarious liability for the acts of their officers. Sub-s. (2) enables the authority to indemnify an inspector against the consequences of an action for damages brought against him if they are satisfied that he honestly believed that his duty under the Act required or entitled him to do the act complained of.

Sub-s. (1): Act done. There is ample authority for saying that this covers an omission; see, in particular, *Wilson v. Halifax Corpn.* (1863), L.R. 3 Exch. 114; *Jolliffe v. Wallasey Local Board* (1873), L.R. 9 C.P. 62; and *Holland v. Northwich Highway Board* (1876), 34 L.T. 137. See also *Graigola Merthyr Co. v. Swansea Corpn.*, [1929] A.C. 344, H.L. (*quia timet action*).

59. Restriction of disclosure of information.—If a person discloses (otherwise than in the performance of his duty or for the purposes of any legal proceedings, including arbitrations, or for the purposes of a report of any such proceedings as aforesaid) any information obtained by him in any premises entered by him in exercise of powers conferred by or by virtue of this Act, he shall be guilty of an offence and liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

NOTES

General effect of section. This section makes it an offence to make improper disclosure of any information obtained in exercise of powers conferred by the Act; it may be compared with the more limited provisions of s. 154 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 389 and Redgrave's Factories Acts (20th Edn.) p. 377).

Guilty of an offence and liable, etc. For further provisions, see ss. 65 *et seq.*, 70, *post*.

60. Annual reports to Minister by local and fire authorities.—(1) A local authority, an authority discharging in any area the functions of fire authority under the Fire Services Act 1947 and the London County Council shall, as soon as practicable after the 31st December in the year in which this section comes into operation (and, in any event, not later than the end of March following), make to the Minister a report of their proceedings under this Act during the period beginning with the day on which this section comes into operation and ending with the said 31st December, being a report containing particulars with respect to such matters arising thereunder as he may by order prescribe, and shall, as soon as practicable after

each anniversary of the last-mentioned day (and, in any event, not later than the end of March following) make to the Minister a report of their proceedings under this Act during the twelve months ending with that anniversary, being a report containing the like particulars.

(2) A copy of every report made in pursuance of the foregoing subsection by an authority shall be kept at the authority's offices, shall be open to inspection by any person at all reasonable hours free of charge and shall be supplied to any person on payment of a reasonable charge therefor.

NOTES

As from 1st April 1965 for the words "London County Council" in sub-s. (1) are substituted the words "Greater London Council" by the London Government Act 1963, s. 51 (1).

General effect of section. Sub-s. (1) provides that local and fire authorities are to make an annual report to the Minister, and sub-s. (2) requires a copy of the report to be kept at the authority's offices and to be made available to the public.

Sub-s. (1): This section comes into operation. See s. 91 (2), *post*.

London County Council. See the note to s. 41, *ante*, and the first note, *supra*.

Beginning. Cf. the note to s. 5, *ante*.

Definitions. For "local authority", see ss. 89 (1), 90 (1), *post*; for "the Minister", see s. 90 (1), *post*.

Fire Services Act 1947. See the note to s. 52, *ante*.

61. Transfer of powers and duties of English or Welsh local authorities in default.—(1) Sections 322 to 325 (transfer of powers and duties of authorities in default) of the Public Health Act 1936 shall, subject to the modifications mentioned in the next following subsection, be deemed to be incorporated in this Act.

(2) The modifications referred to in the foregoing subsection are the following:—

- (a) references to the Minister shall be construed as referring to the Minister of Labour;
- (b) for the words "council, port health authority or joint board" (wherever occurring) and the words "council, authority or board" (wherever occurring) there shall be substituted the words "local authority";
- (c) in section 322 (3) (i), for the words from "the council of a county district" to "one county" (where secondly occurring) there shall be substituted the words "a local authority other than the council of a county borough";
- (d) in section 323, for the words "the council of a county district, a port health authority or a joint board", there shall be substituted the words "a local authority", and in paragraph (a) of that section for the word "grant" there shall be substituted the word "contribution";
- (e) in section 324 (2) the words "port health authority or joint board" and the words "or board" shall be omitted.

(3) Subsections (2) to (5) of section 290 of the Local Government Act 1933 (which provides for the holding of inquiries for the purposes of that Act) shall, with the substitution, for references to a department, of references to the Minister, apply to an inquiry held under the said section 322 by virtue of subsection (1) of this section as they apply to an inquiry held under the said section 290.

(4) This section extends to England and Wales only.

NOTES

General effect of section. Sub-ss. (1) and (2) incorporate with this Act ss. 322 to 325 of the Public Health Act 1936, with modifications, so that the Minister may assume the functions under this Act of a local authority if it is in default. Sub-s. (3) provides that s. 290 (2)–(5) of the Local Government Act 1933 is to apply, with modifications, to an inquiry held under s. 322 of the Public Health Act 1936, by virtue of its incorporation in this Act.

County borough. Cf. the note "Local authority" to s. 90, *post*; and see as to the Isles of Scilly, s. 88, *post*.

Definitions. For "local authority", see ss. 89 (1), 90 (1), *post*; for "the Minister" in sub-s. (2), see s. 90 (1), *post*.

Public Health Act 1936, ss. 322–325. See 19 Halsbury's Statutes (2nd Edn.) 483 *et seq*.

Local Government Act 1933, s. 290. See 14 Halsbury's Statutes (2nd Edn.) 503.

62. Exercise and performance by Minister of powers of Scottish local authorities in default.—(1) If the Minister is of opinion that an investigation should be made as to whether a local authority have failed to discharge any of their functions under this Act, he may cause a local inquiry to be held, and if, after the inquiry has been held, he is satisfied that there has been such a failure on the part of the local authority, he may by order empower an officer of his department to discharge or procure the discharge of any such function.

(2) The amount (as certified by the Minister) of any expenses incurred in pursuance of the foregoing subsection shall, on demand, be paid to him by the local authority and shall be recoverable by him from them as a debt due to the Crown, and the authority shall have the like power of raising the money required as they have of raising money for defraying expenses incurred directly by them as a local authority.

(3) In relation to a local inquiry held under subsection (1) above, the provisions of subsections (3) to (9) of section 355 of the Local Government (Scotland) Act 1947 (which relate to local inquiries) shall apply as they apply in relation to local inquiries under that section.

(4) Nothing in this section shall affect any other power exercisable by the Minister with respect to defaults of local authorities.

(5) This section extends to Scotland only.

NOTES

General effect of section. This section is the counterpart for Scotland of s. 61, *ante*.

Opinion. See the note to s. 6, *ante*.

Definitions. For "the Minister" and "local authority", see s. 90 (1), *post*.

Local Government (Scotland) Act 1947. 10 & 11 Geo. 6 c. 43.

Offences, Penalties and legal Proceedings

63. Offences.—(1) In the event of a contravention, in relation to any premises to which this Act applies, of any such provisions of this Act as are mentioned in subsection (2) of this section or of regulations made under any such provisions, then—

- (a) except in a case falling within either of the two following paragraphs, the occupier of the premises shall be guilty of an offence;
- (b) in a case where the contravention is one for which, by or by virtue of this Act, some other person or persons is or are made responsible as well as the occupier of the premises, that other person or those other persons and the occupier shall each be guilty of an offence;
- (c) in a case where the contravention is one for which, by or by virtue of this Act, some other person or persons is or are made responsible instead of the occupier of the premises, that other person or each of those other persons shall be guilty of an offence.

(2) The provisions of this Act referred to in the foregoing subsection are sections 4, 5, 6 (1) to (5), 7 to 12, 13 (1), 14 to 19, 23, 24, 28, 29 (6), 30 (1), 33 to 38, 46 (9) and 48 (1) and (2).

NOTES

General effect of section. This section makes a contravention of any of the sections of the Act specified in sub-s. (2) or regulations thereunder an offence. Primarily the occupier of the premises alone is guilty of the offence but the relevant section or regulation may make some other person responsible as well as, or instead of, the occupier.

It may be compared with s. 155 (1) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 389 and Redgrave's Factories Acts (20th Edn.) p. 377).

As to penalties, see s. 64, *infra*; as to offences by bodies corporate, see s. 65, *infra*; as to offences by persons actually committing a contravention for which others are liable, see s. 66, *post*; and as for the defence of due diligence, see s. 67, *post*.

All offences under this Act are triable summarily; see s. 70, *post*.

Sub-s. (1): Contravention. This includes a failure to comply with the provisions in question; see s. 90 (1), *post*.

Premises to which this Act applies. See ss. 1 to 3, *ante*.

Occupier. See the note to s. 22, *ante*.

Offence. For further provisions, see ss. 64, *et seq.*, 70, 86 (1), *post*.

Some other person . . . as well as the occupier of the premises, etc. See ss. 37 (2), 38 (2), *ante*.

Some other person . . . instead of the occupier, etc. See ss. 37 (2), 38 (2), 42 (6), (7), (13), (14), 43 (4), (5), (11), (12) and 44, *ante*.

64. Penalty for offences for which no express penalty is provided.

—(1) A person guilty of an offence under this Act for which no express penalty is provided shall be liable to a fine not exceeding sixty pounds and, if the contravention constituting the offence of which he is guilty is continued after his conviction of the offence, he shall be guilty of a further offence and liable, in respect thereof, to a fine not exceeding fifteen pounds for each day on which the contravention is so continued.

(2) The foregoing subsection shall, in a case where the court by which a person is convicted of any such offence as aforesaid is satisfied that the contravention constituting the offence was likely to cause the death of, or serious bodily injury to, any person, have effect as if, for the reference to sixty pounds, there were substituted a reference to three hundred pounds.

NOTES

General effect of section. By sub-s. (1) the maximum penalty for those offences for which no express penalty is provided is £60 and, for an offence continued after conviction, £15 a day. Sub-s. (2) provides that where the offence was likely to cause death or serious bodily injury the penalty may be increased to £300.

This section may be compared with s. 156 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 390 and Redgrave's Factories Acts (20th Edn.) p. 380).

Sub-s. (1): Contravention. This includes a failure to comply with the provisions in question; see s. 90 (1), *post*.

Further offence. No fine may be imposed in respect of any day earlier than six months before the information was laid; see *R. v. Chertsey Justices, Ex parte Franks*, [1961] 1 All E.R. 825; [1961] 2 Q.B. 152.

Sub-s. (2): Serious bodily injury. Note that the Act, in ss. 20 (1), 21 (1) and 22 (1) (a), distinguishes between "bodily injury" and "injury to health"; *semble*, injury to health does not come within this subsection unless so serious as to be likely to cause death.

65. Offences by bodies corporate.—(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In the foregoing subsection, the expression "director", in relation to any body corporate which is established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking and whose affairs are managed by the members thereof, means a member of that body.

NOTES

General effect of section. This section provides that where the nominal offender is a body corporate, any director or executive officer may also be guilty of the offence if the contravention was committed with his consent or connivance or is attributable

to his neglect. It may be compared with s. 155 (5) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 389 and Redgrave's Factories Acts (20th Edn.) p. 378).

Sub-s. (1): Consent . . . connivance . . . neglect. These words must be construed in their context and they here seem between them to cover all degrees of blameworthiness from true consent with knowledge (see *Lamb v. Wright & Co.*, [1924] 1 K.B. 857; [1924] All E.R. Rep. 220 "a man cannot consent to what he does not know"), through wilful blindness or tacit permission to mere neglect in the carrying out of those duties which a director, etc., ought to perform in the exercise of his office.

66. Penalty on persons actually committing offences for which others are liable.—Where a contravention of a provision of this Act or of regulations thereunder for which a person is, by virtue of the foregoing provisions of this Act, liable on conviction to a penalty was due to an act or default of another person, then, whether proceedings are or are not taken against the first-mentioned person, that other person may be charged with, and convicted of, the offence constituted by the contravention and shall, on conviction, be liable to the same punishment as that to which the first-mentioned person is, on conviction, liable.

NOTES

General effect of section. This section enables the person actually committing an offence under this Act to be charged and convicted whether or not proceedings are taken against the occupier or other person made responsible. It may be compared with s. 160 (1) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 393 and Redgrave's Factories Acts (20th Edn.) p. 383).

Contravention. This includes a failure to comply with the provisions in question; see s. 90 (1), *post*.

Act or default. This means wrongful act or default; see *Noss Farm Products, Ltd. v. Lilico*, [1945] 2 All E.R. 609 and *Lamb v. Sunderland and District Creamery, Ltd.*, [1951] 1 All E.R. 923. Accordingly, the fact that what the other person did subsequently became unlawful is not sufficient to bring the section into operation; see *Noss Farm Products, Ltd. v. Lilico*, *supra*. *Mens rea* or negligence need not be proved if the original offence is constituted without proof of *mens rea* or negligence, as the case may be; see *Lindley v. George W. Horner & Co., Ltd.*, [1950] 1 All E.R. 234; *Lamb v. Sunderland and District Creamery, Ltd.*, *supra*; and *Lester v. Balfour Williamson Merchant Shippers, Ltd.*, [1953] 1 All E.R. 1146; also *Fisher v. Barrett and Pomeroy (Bakers), Ltd.*, [1954] 1 All E.R. 249. The original defendant must, to secure an acquittal, prove not only that the contravention was due to the act or default of the other party, but also that he has used due diligence to secure compliance with the provisions of the Act; see *Moore v. Ray*, [1950] 2 All E.R. 561. Moreover, a person who merely sells as agent for a disclosed principal cannot be said to have committed an act or default by selling; see *Lester v. Balfour Williamson Merchant Shippers, Ltd.*, *supra*.

67. Defence available to persons charged with offences.—It shall be a defence for a person charged with a contravention of a provision of this Act or of regulations thereunder to prove that he used all due diligence to secure compliance with that provision.

NOTES

General effect of section. This section provides that proof of the use of all due diligence is to be a good defence to a charge under this Act; it may be compared with s. 161 (1) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 393 and Redgrave's Factories Acts (20th Edn.) p. 383).

The section is only concerned with criminal liability and does not provide a defence to a civil action; cf. *Yelland v. Powell Duffryn Associated Collieries, Ltd.*, [1941] 1 All E.R. 278; [1941] 1 K.B. 154, C.A.; *Potts (or Riddell) v. Reid*, [1942] 2 All E.R. 161; [1943] A.C. 1, H.L.; and *Gallagher v. Dorman, Long & Co., Ltd.*, [1947] 2 All E.R. 38, C.A.

Defence. The burden of proof laid on the defendant is less onerous than that resting on the prosecutor as regards proving the offence, and may be discharged by satisfying the court of the probability of what the defendant is called on to prove; see *R. v. Carr-Briant*, [1943] 2 All E.R. 156; [1943] K.B. 607, C.A., and *R. v. Dunbar*, [1957] 3 All E.R. 737; [1958] 1 Q.B. 1, C.C.A.

Contravention. This includes a failure to comply with the provision in question; see s. 90 (1), *post*.

Used all due diligence. Whether the defendant has or has not used all due diligence is a question of fact, but on a case stated the High Court will interfere if

there was no evidence to support a finding on this point; see *R. C. Hammett, Ltd. v. Crabb* (1931), 145 L.T. 638; [1931] All E.R. Rep. 70.

The failure of the directors of a limited company to use due diligence is the failure of the company; see *Pearce v. Cullen* (1952), 96 Sol. Jo. 132. See also *Rogers v. Barlow & Son* (1906), 94 L.T. 519, and *R. C. Hammett, Ltd. v. London County Council* (1933), 97 J.P. 105.

68. Falsification of documents, false statements, &c.—(1) If a person—

(a) with intent to deceive, forges—

(i) a fire certificate or a certificate such as is mentioned in section 46 (8) of this Act; or

(ii) an instrument issued under regulations under this Act whereby exemption is granted from any provision of the regulations;

or makes or has in his possession a document so closely resembling any such certificate or instrument as aforesaid as to be calculated to deceive; or

(b) for the purpose of procuring the issue of a fire certificate or the grant or extension of an exemption under section 46 of this Act or the issue under regulations under this Act of an instrument whereby exemption is granted from any provision of the regulations, makes a statement which he knows to be false in a material particular or recklessly makes a statement which is so false, or produces, furnishes, sends or otherwise makes use of a document which he knows to be so false or recklessly produces, furnishes, sends or otherwise makes use of a document which is so false; or

(c) wilfully makes a false entry in any register, book, notice or other document required by or by virtue of this Act to be kept, served or given;

he shall be guilty of an offence and liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(2) If a person falsely pretends to be an inspector appointed under section 52 (1), (2) or (5) of this Act, a person authorised under subsection (3) of that section by the Minister, a person authorised under subsection (6) of that section by the Minister of Power or an officer appointed under section 57 of this Act by the Minister, he shall be guilty of an offence and liable to a fine not exceeding ten pounds.

(3) In this section, the expression “forges” has, in the application thereof to England and Wales, the same meaning as in the Forgery Act 1913.

NOTES

General effect of section. This section creates the offences specified and may be compared with s. 159 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 392 and Redgrave's Factories Acts (20th Edn.) p. 382), and with s. 161 of the Mines and Quarries Act 1954 (101 Statutes Supp. 182).

Sub-s. (1): Intent to deceive. “To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false”; see *Re London and Globe Finance Corp'n., Ltd.*, [1903] 1 Ch. 728; [1900-3] All E.R. Rep. 891, *per* Buckley, J., at p. 732 and p. 893 respectively, as explained and approved in *Welham v. D.P.P.*, [1960] 1 All E.R. 805; [1961] A.C. 103, H.L. It is sufficient for the prosecution to prove an intent to deceive generally without proving an intent to deceive a particular person; see *R. v. Greenberg*, [1942] 2 All E.R. 344; see also *R. v. Clark* (1918), 82 J.P. 295 and *Brend v. Wood* (1946), 175 L.T. 306.

Instrument . . . exemption is granted, etc. Cf. s. 80 (5), *post*.

Calculated. This word is not free from ambiguity, for it may mean “likely” or “intended”; cf. 82 J.P. Jo. 447 and 103 J.P. Jo. 734. Yet, as intent to deceive is already an essential ingredient of the offence by virtue of the words “with intent to deceive” it seems that “calculated” here means “likely”; cf. also, in particular *Eno v. Dunn* (1890), 15 App. Cas. 252, H.L.; *Re McGlennon's Application for Registration of Shamrock* (1908), 25 T.L.R. 23; and *Re Royal Worcester Corset Co.'s Application*, [1909] 1 Ch. 459.

False. A statement, etc., may be false on account of what it omits even though it is literally true; see *R. v. Lord Kylsant*, [1932] 1 K.B. 442; [1931] All E.R. Rep. 179, and *R. v. Bishirgian*, [1936] 1 All E.R. 586.

Recklessly. On the meaning of this expression, see, in particular, *Derry v. Peek* (1889), 14 App. Cas. 337; *Williams Brothers Direct Supply Stores, Ltd. v. Cloote* (1944), 60 T.L.R. 270; *R. v. Bates*, [1952] 2 All E.R. 842; *R. v. Russell*, [1953] 1 W.L.R. 77; 97 Sol. Jo. 12; *R. v. Mackinnon*, [1958] 3 All E.R. 657; [1959] 1 Q.B. 150; and *R. v. Grunwald*, [1960] 3 All E.R. 380.

Wilfully. This expression, in the words of Lord Russell of Killowen, C.J., in *R. v. Senior*, [1899] 1 Q.B. 283, at pp. 290, 291; [1895-9] All E.R. Rep. 511 "means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it"; see also *R. v. Walker* (1934), 24 Cr. App. Rep. 117; *Eaton v. Cobb*, [1950] 1 All E.R. 1016 and *Arrowsmith v. Jenkins*, [1963] 2 All E.R. 210.

Shall be guilty of an offence and liable, etc. For further provisions, see s. 65, *ante*, and s. 70, *infra*.

Definitions. For "fire certificate", see s. 29 (1), *ante*; for "the Minister", see s. 90 (1), *post*. Note, as to "forges", sub-s. (3) of this section.

Forgery Act 1913. For the definition of "forgery" in that Act, see s. 1 thereof (5 Halsbury's Statutes (2nd Edn.) 981).

69. Removal or defacement of documents posted in pursuance of Act or regulations under it. If, without reasonable excuse, a person removes, injures or defaces a notice or other document which is for the time being posted or displayed in any premises in pursuance of a provision of this Act or of regulations thereunder, he shall be guilty of an offence and liable to a fine not exceeding ten pounds.

NOTES

General effect of section. This section makes it an offence for any person to remove or deface a notice or other document posted pursuant to the Act or regulations. It may be compared with s. 138 (4) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 377 and Redgrave's Factories Acts (20th Edn.) p. 356).

Shall be guilty of an offence and liable, etc. For further provisions, see s. 65, *ante*, and s. 70, *infra*.

70. Prosecution of offences.—(1) All offences under this Act shall be triable summarily.

(2) A magistrates' court or sheriff shall, in any proceedings for an offence under this Act, if required by either party, cause a note of the evidence to be taken and preserved.

(3) A factory inspector, if authorised in that behalf by the Minister, may, although not of counsel or a solicitor, prosecute or conduct before a magistrates' court or before a sheriff proceedings for an offence under this Act.

(4) Notwithstanding any rule of law in Scotland, it shall not be an objection to the competence of a factory inspector to give evidence as a witness in any prosecution for an offence under this Act that the prosecution is brought at his instance or conducted by him.

NOTES

General effect of section. Sub-s. (1) provides that all offences under the Act are triable summarily; sub-s. (2) provides that a note of the evidence is to be taken if either party so requires; sub-s. (3) enables a factory inspector (but not a local authority's or other inspector) to conduct proceedings. This section may be compared with s. 149 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 385 and Redgrave's Factories Acts (20th Edn.) p. 371).

Sub-s. (1): Triable summarily. Summary jurisdiction and procedure are now mainly governed by the Magistrates' Courts Acts 1952 to 1957, *i.e.*, the Magistrates' Courts Act 1952 (32 Halsbury's Statutes (2nd Edn.) 416), and the Magistrates' Courts Act 1957 (104 Statutes Supp. 2).

Sub-s. (3): May . . . prosecute or conduct, etc. Cf. on the question of proof of authority, *Ross v. Helm*, [1913] 3 K.B. 462.

Definitions. For "factory inspector", "magistrates' court" and "the Minister", see s. 90 (1), *post*.

71. Local authorities' inspectors in Scotland to have power to institute proceedings in certain cases.—(1) An inspector appointed under this Act by a local authority may, if duly authorised in that behalf by a general resolution of the authority, make a summary application under section 22 of this Act with respect to any premises with respect to which the authority have power to enforce any of the provisions of sections 4 to 21 of this Act; and for the purposes of this subsection the expression "premises" includes a common part of a building to which section 42 or section 43 of this Act applies.

(2) An inspector appointed under this Act by the authority discharging in any area the functions of fire authority under the Fire Services Act 1947 may, if duly authorised as aforesaid by the authority, make a summary application under section 32 of this Act with respect to any premises in that area with respect to which they are the appropriate authority for the purposes of that section.

NOTES

General effect of section. This section allows an inspector appointed by a local authority or an authority discharging in any area the functions of a fire authority, to institute proceedings under, respectively, s. 22, *ante*, for an order of a sheriff for putting down dangerous conditions and practices, and s. 32, *ante*, for such an order putting down dangerous conditions in regard to means of escape in case of fire. The section applies to Scotland only.

Inspector appointed. Inspectors are appointed under s. 52, *ante*.

Local authority. For meaning, see s. 90 (1), *post*.

Fire Services Act 1947. "Fire authority" is defined in s. 39 (1) of that Act (44 Statutes Supp. 80) as meaning an authority which for the time being is constituted a fire authority by that Act or any combination scheme made thereunder.

72. Appeal from orders made on complaint. A person aggrieved by an order made by a magistrates' court on determining a complaint under this Act may appeal therefrom to a court of quarter sessions.

NOTES

General effect of section. This section provides for appeals to quarter sessions and may be compared with s. 165 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 397 and Redgrave's Factories Acts (20th Edn.) p. 390).

Person aggrieved. "Person" includes a body corporate unless the contrary intention appears; see the Interpretation Act, 1889, s. 19 (24 Halsbury's Statutes (2nd Edn.) 222); as to contrary intention, see *R. v. London Quarter Sessions, Ex parte Westminster Corpn.*, [1951] 1 All E.R. 1032, at p. 1033; [1951] 2 K.B. 508, at p. 511, and cf. *Ealing Borough Council v. Jones*, [1959] 1 All E.R. 286, at p. 287; [1959] 1 Q.B. 384, at p. 389. A "person aggrieved" is any person who has suffered a legal grievance, or against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something; *per James, L.J.*, in *Re Sidebotham, Ex parte Sidebotham* (1880), 14 Ch.D. 458, C.A., at p. 465. It includes a person ordered to pay costs; see *Jennings v. Kelly*, [1939] 4 All E.R. 464, H.L., *R. v. Surrey Quarter Sessions, Ex parte Lilley*, [1951] 2 All E.R. 659. A public body which has been frustrated in the performance of its public duty is not "aggrieved"; see *Ealing Borough Council v. Jones*, [1959] 1 All E.R. 286; [1959] 1 Q.B. 384.

Appeal. The appeal is governed by the Summary Jurisdiction Act 1879 (14 Halsbury's Statutes (2nd Edn.) 869), as amended, and the Magistrates' Courts Act 1952, s. 84 (32 Halsbury's Statutes (2nd Edn.) 486), as amended. See also the Magistrates' Courts Rules 1952 (S.I. 1952 No. 190, r. 59; 13 Halsbury's Statutory Instruments, title Magistrates, Part 1).

Following an appeal under this section quarter sessions cannot be compelled by *mandamus* to state a case for the opinion of the High Court; see *R. v. Somerset Justices, Ex parte Ernest J. Cole & Partners, Ltd.*, [1950] 1 All E.R. 264; [1950] 1 K.B. 519. See also, generally, as to the statement of a case by quarter sessions, 25 Halsbury's Laws (3rd Edn.) 312 *et seq.*

73. Power of county court and sheriff to modify agreements and apportion expenses.—(1) A person who, by reason of the terms of an agreement or lease relating to any premises, is prevented from therein

carrying out or doing any structural or other alterations or other thing whose carrying out or doing is requisite in order to secure compliance with a provision of this Act or of regulations thereunder which is, or will become, applicable to the premises, in order to comply with a requirement imposed by a notice served under section 30 (4) or 35 (2) of this Act or in order to enable effect to be given to proposals without contravention of a prohibition imposed by a notice served under the said section 30 (4), may apply to the county court within whose jurisdiction the premises are situate, and the court may make such an order setting aside or modifying any terms of the agreement or lease as the court considers just and equitable in the circumstances of the case.

(2) Where the carrying out or doing in any premises of any structural or other alterations or other thing whose carrying out or doing is requisite as mentioned in the foregoing subsection involves a person having an interest in the premises in expense or in increased expense, and he alleges that the whole or part of the expense or, as the case may be, the increase ought to be borne by some other person having an interest in the premises, the first-mentioned person may apply to the county court within whose jurisdiction the premises are situate, and the court, having regard to the terms of any agreement or lease relating to the premises, may by order give such directions with respect to the persons by whom the expense or increase is to be borne, and in what proportions it is to be borne by them and, if need be, for modification of the terms of any such agreement or lease so far as concerns rent payable in respect of the premises as the court considers just and equitable in the circumstances of the case.

(3) In the application of this section to Scotland, for references to a county court there shall be substituted references to the sheriff.

NOTES

General effect of section. Sub-s. (1) enables the county court to set aside or modify any terms in an agreement or lease which prevent such alterations being made to the premises as are necessary to comply with the Act or regulations; sub-s. (2) enables the county court to apportion between persons with an interest in the premises the expense of such alterations as are necessary to comply with the Act and, if necessary, to modify the rent payable under a lease or agreement. This section may be compared with ss. 169, 170 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 399 and Redgrave's Factories Acts (20th Edn.) pp. 393, 394).

Sub-s. (1): May apply to the county court. The application is made by originating application under C.C.R. Ord. 6, r. 4. In *Horner v. Franklin*, [1905] 1 K.B. 479, C.A., and *Stuckey v. Hooke*, [1906] 2 K.B. 20, C.A., it was held that the provisions of the Factory and Workshops Act 1901, similar to those of sub-s. (1), gave exclusive jurisdiction to the county court.

Just and equitable in the circumstances of the case. The terms of the lease or agreement are part of the circumstances of the case and, although not binding on the court, ought to be considered; see *Monk v. Arnold*, [1902] 1 K.B. 761; *Horner v. Franklin*, *supra*; *Stuckey v. Hooke*, *supra*.

Amendments of other Acts

74. Amendment of section 123 (1) and 124 (1) of Factories Act 1961, and provisions consequential thereon.—(1) For the purposes of section 123 (1) (application of Act to electrical stations) of the Factories Act 1961, office premises to which this Act applies which are comprised in premises to which that subsection applies shall, notwithstanding that they are so comprised, be deemed not to form part of the premises.

(2) The Minister may by special regulations provide that premises which, but for the operation of the foregoing subsection, would, for the purposes of the said section 123 (1), form part of premises to which the said section 123 (1) applies, or any class of premises such as are first-mentioned in this subsection,—

(a) shall be excepted from the operation of section 24 of this Act; and

(b) shall, notwithstanding the foregoing subsection, be deemed for the purposes of section 61 (first aid) of the said Act of 1961 to form part of the premises of which, but for that subsection, they would, for the purposes of the said section 123 (1), form part.

(3) Regulations under this section may provide that, for the purposes of the application to premises to which the said section 123 (1) applies of subsection (4) of the said section 61, persons employed to work in premises which, by virtue of the regulations, are deemed for the purposes of the said section 61 to form part of the first-mentioned premises shall (according as may be specified in the regulations) be left out of account or be taken into account to a number (ascertained in accordance with the regulations) less than the full number thereof.

(4) The foregoing provisions of this section shall, with the substitution, for references to the said section 123 (1), of references to section 124 (1) (institutions) of the Factories Act 1961, have effect with respect to office premises to which this Act applies which are comprised in premises to which the said section 124 (1) applies, as they have effect with respect to office premises to which this Act applies which are comprised in premises to which the said section 123 (1) applies.

NOTES

General effect of section. Sub-s. (1) provides that this Act, and not the Factories Act 1961, is to apply to offices forming part of electrical stations, but sub-s. (2) enables the Minister to make special regulations excluding such offices from the first-aid provisions of this Act (s. 24, *ante*), and subjecting them, together with the rest of the electrical stations, to the first-aid provisions of the Factories Act 1961; see s. 61 of that Act (41 Halsbury's Statutes (2nd Edn.) 301). Sub-s. (3) enables regulations to be made whereby the persons employed in premises which, by virtue of the regulations, are deemed to form part of an electrical station for the purposes of s. 61 of the Factories Act 1961 are to be left out of account or counted as less than the actual number when calculating whether the total number of persons employed at the station requires the appointment of a trained first-aid man pursuant to s. 61 (4) of that Act. Sub-s. (4) applies sub-ss. (1), (2) and (3) to office premises forming part of institutions covered by s. 124 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 360).

Sub-s. (1): Office premises to which this Act applies. See ss. 1 to 3, *ante*.

Definitions. For "employed", see s. 90 (1), (4), *post*; for "the Minister", see s. 90 (1), *post*; for "office premises", see s. 1 (2), (5), *ante*.

Factories Act 1961, ss. 61, 123 (1), 124 (1). See 41 Halsbury's Statutes (2nd Edn.) 301, 359, 360.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations in general and special regulations in particular, see s. 80 and Sch. 1, *post*; and see also s. 90 (5), *post*.

75. Amendment of section 125 (1) of Factories Act 1961, and provisions consequential thereon.—(1) For the purposes of section 125 (1) (docks, etc.) of the Factories Act 1961, office premises to which this Act applies which are comprised in premises to which that subsection applies shall, notwithstanding that they are so comprised, be deemed not to form part of the premises.

(2) The Minister may by special regulations provide that premises which, but for the operation of the foregoing subsection, would, for the purposes of the said section 125 (1), form part of premises to which the said section 125 (1) applies, or any class of premises such as are first-mentioned in this subsection,—

(a) shall be excepted from the operation of section 24 of this Act; and

(b) shall, notwithstanding the foregoing subsection, be deemed for the purposes of any regulation as to first aid made by virtue of section 125 (2) of the said Act which is applicable to the premises of which, but for the foregoing subsection, they would, for the purposes of the said section 125 (1), form part, to form part of those premises.

(3) The reference in the said section 125 (1) to a warehouse in or for the purposes of which mechanical power is used, being a warehouse neither forming part of a factory nor belonging to the owners, trustees or conservators of a dock, wharf or quay, shall be construed as not including a building occupied by a wholesale dealer or merchant where goods are kept for sale wholesale or a part of a building so occupied where goods are so kept.

NOTES

General effect of section. Sub-s. (1) provides that this Act and not the Factories Act 1961 is to apply to offices forming part of a dock or other place to which s. 125 (1) of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 361) applies, but sub-s. (2) enables the Minister to make special regulations excluding such offices from the first-aid provisions of this Act (s. 24, *ante*), and subjecting them to any first-aid regulations governing the rest of the dock, etc., made under s. 125 (1) of the Factories Act 1961. Sub-s. (3) excludes from the operation of s. 125 (1) of the Factories Act 1961 a building within s. 1 (3) (a) (iii) of this Act.

Sub-s. (1): Office premises to which this Act applies. See ss. 1 to 3, *ante*.

Premises used for the sale of fish by wholesale. For provisions as to premises which, not being office premises, are used for the sale of fish by wholesale and constitute, or are comprised in, premises to which the Factories Act 1961, s. 125 (1) (41 Halsbury's Statutes (2nd Edn.) 361), applies, see s. 85 (2), *post*.

Definitions. For "building" and "the Minister", see s. 90 (1), *post*; for "office premises", see s. 1 (2), (5), *ante*.

Factories Act 1961, s. 125 (1). See 41 Halsbury's Statutes (2nd Edn.) 361.

Regulations under this section. No regulations had been made under this section up to 14th October 1963.

For provisions as to regulations in general and special regulations in particular, see s. 80 and Sch. 1, *post*; and see also s. 90 (5), *post*.

76. Amendment of Public Health Act 1936.—(1) Where plans of a building or of an extension of a building are, in accordance with building byelaws or building regulations, deposited with a local authority, and the building or, as the case may be, the building as extended will be a building to which section 59 (exits, entrances, &c., in the case of certain public, and other, buildings) of the Public Health Act 1936 applies and, in the authority's opinion, will be likely to be the subject of an application under section 29 of this Act, the authority (if not themselves the authority discharging, in the area in which the building or the building as extended is or will be situate, the functions of fire authority under the Fire Services Act 1947) shall, before passing or rejecting the plans, seek consultation thereon with the authority discharging, in that area, those functions.

(2) Neither subsections (2) to (4) of section 59 of the said Act of 1936 nor section 60 (means of escape from fire in the case of certain high buildings) thereof nor any provision of a local Act which has effect in place of the said section 60 shall apply to premises with respect to which a fire certificate is for the time being in force.

(3) Section 92 (1) (e) of the said Act of 1936 (which includes, amongst the statutory nuisances that may be dealt with summarily under Part III of that Act, ill-ventilated, dirty, overcrowded or malodorous workplaces) shall not apply to premises to which this Act applies.

NOTES

General effect of section. Sub-s. (1) provides that, where plans of a building to which s. 59 of the Public Health Act 1936 applies have been submitted to a local authority and it appears that a fire certificate under s. 29 of this Act will be applied for, the local authority must, if not themselves the fire authority, consult the appropriate fire authority before passing or rejecting the plans. Sub-s. (2) provides that, where a fire certificate under this Act is in force, neither s. 59 (2)–(4) nor s. 60 of the Public Health Act 1936 are to have effect. Sub-s. (3) excludes premises within this Act from the operation of s. 92 (1) (e) of the Public Health Act 1936.

Sub-s. (1): Building byelaws or building regulations. Provision for the making of building byelaws outside London is made by the Public Health Act 1936, ss. 61 and 62 (130 Statutes Supp. 131, 132). Under the Public Health Act 1961, s. 4 (130 Statutes Supp. 39) (which is to come into force on a day yet to be appointed; see s. 86 (2) of that Act (130 Statutes Supp. 111)), this power to make building byelaws

will be replaced by a power of the Minister of Housing and Local Government to make by statutory instrument, subject to the "negative resolution" procedure, regulations to be known as building regulations.

Consultation. See the note "Consult" to s. 41, *ante*.

Sub-s. (3): Premises to which this Act applies. See ss. 1-3, *ante*.

Definitions. For "building", see s. 90 (1), *post*; for "local authority", see ss. 89 (1), 90 (1), *post*; for "fire certificate", see s. 29 (1), *ante*.

Public Health Act 1936, ss. 59, 60, 92 (1) (e). See 19 Halsbury's Statutes (2nd Edn.) 355, 357, 379.

Fire Services Act 1947. See the note to s. 52, *ante*.

77. Exclusion of application of sections 128 and 129 of Public Health (London) Act 1936.—*Sections 128 (nuisances from factories, workshops and workplaces) and 129 (limewashing and washing of factories, workshops and workplaces) of the Public Health (London) Act 1936 shall not apply to premises to which this Act applies.*

NOTES

This section is repealed as from 1st April 1965, by the London Government Act 1963, s. 93 (1), Sch. 18, Part II.

General effect of section. This section excludes premises within this Act from the operation of ss. 128 and 129 of the Public Health (London) Act 1936.

Premises to which this Act applies. See ss. 1-3, *ante*.

Public Health (London) Act 1936, ss. 128, 129. See 15 Halsbury's Statutes (2nd Edn.) 963, 964.

78. Provision for securing exercise of local Act powers in conformity with this Act.—A person required by or under a local Act to effect any alterations to, or to any apparatus or fittings in, a building shall not be treated as having acted in contravention of that enactment by reason of his failure to effect those alterations in so far as the failure is attributable to the fact that remedying it would involve a contravention of this Act or regulations thereunder.

NOTES

General effect of section. This section provides that any requirement of a local Act to effect alterations is to be inoperative if the alterations would involve a contravention of this Act.

Definitions. For "building" and "contravention", see s. 90 (1), *post*.

General Provisions

79. Minister to report to Parliament.—The Minister shall annually lay before Parliament a report of his proceedings under this Act and generally about the operation of this Act.

NOTES

The Minister. *I.e.*, the Minister of Labour; see s. 90 (1), *post*.

Lay before Parliament. For provisions as to laying before Parliament, see the Laying of Documents before Parliament (Interpretation) Act 1948, s. 1 (1) (56 Statutes Supp. 293).

80. Regulations and orders.—(1) Any regulations or orders made under this Act by the Minister (other than orders made under section 62 of this Act) shall be made by statutory instrument.

(2) A statutory instrument containing regulations under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Any power conferred by this Act to make regulations and any power conferred by or by virtue of this Act to make an order (except the power conferred by section 62 of this Act) shall respectively include power to make different provision in relation to different circumstances.

(4) Any power conferred by this Act to prescribe standards or impose requirements shall include power to do so by reference to the approval of the Minister.

(5) Regulations under this Act may grant or provide for the granting of exemptions from any of the provisions of the regulations, either unconditionally or subject to conditions.

(6) Regulations under this Act may empower the Minister by order to prescribe any particulars required to be furnished to any person in pursuance of the regulations and any form to be used for any purpose of the regulations; and the Statutory Instruments Act 1946 shall apply to an order made by virtue of this subsection as it applies to an order made under this Act.

(7) Any power conferred by or by virtue of this Act to make an order shall include power to vary or revoke the order by a subsequent order.

(8) The provisions of Schedule 1 to this Act shall have effect with respect to regulations referred to in this Act as special regulations.

NOTES

General effect of section. This section may be compared with s. 180 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 412 and Redgrave's Factories Acts (20th Edn.) p. 430).

Sub-s. (1): The Minister. *I.e.*, the Minister of Labour; see s. 90 (1), *post*.

Statutory instrument. For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946 (36 Statutes Supp. 95).

Sub-s. (2): Annulment. For provisions as to annulment, see the Statutory Instruments Act 1946, ss. 5 (1) and 7 (1) (36 Statutes Supp. 98, 99); and see also the Laying of Documents before Parliament (Interpretation) Act 1948 (56 Statutes Supp. 293).

Statutory Instruments Act 1946. See 36 Statutes Supp. 95.

81. Mode of service of notices under this Act.—(1) A notice required or authorised by or by virtue of this Act to be served on or given to a factory inspector or a mine and quarry inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office.

(2) Any such notice required or authorised to be served on or given to a person other than a factory inspector or a mine and quarry inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by post.

(3) Any such notice required or authorised to be served on or given to a corporation or firm shall be duly served or given if it is served on or given to, as the case may be, the secretary or clerk of the corporation or a partner of the firm.

(4) For the purposes of this section and of section 26 of the Interpretation Act 1889 in its application to this section the proper address of a person on or to whom any such notice as aforesaid is to be served or given shall, in the case of the secretary or clerk of a corporation, be that of the registered or principal office of the corporation, in the case of a partner of a firm, be that of the principal office of the firm, and, in any other case, be the last known address of the person to be served:

Provided that, where the person on or to whom the notice is to be served or given has, in accordance with arrangements agreed, furnished an address for the service or giving of the notice, being an address in the United Kingdom, his proper address for the purposes aforesaid shall be the address furnished.

(5) If the name or the address of any owner or occupier of land on or to whom any such notice as aforesaid is to be served or given cannot after reasonable inquiry be ascertained by the authority or person seeking to serve or give the notice, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of "owner" or "occupier" of the land (describing it) to which the notice relates, and by delivering it to some responsible person resident or appearing to be resident on the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

(6) The foregoing provisions of this section shall apply to the sending of a document as they apply to the giving of a notice.

NOTES

General effect of section. This section may be compared with s. 118 of the Factories Act 1961 (41 Halsbury's Statutes (2nd Edn.) 398 and Redgrave's Factories Acts (20th Edn.) p. 392).

Sub-ss. (1), (2): By post. See, as to non-delivery, *R. v. London Quarter Sessions, Ex parte Rossi*, [1956] 1 All E.R. 670; [1956] 1 Q.B. 682, C.A., and *Beer v. Davies*, [1958] 2 All E.R. 255; [1958] 2 Q.B. 187; and contrast *Layton v. Shires*, [1959] 3 All E.R. 587; [1960] 2 Q.B. 294, and *Hosier v. Goodall*, [1962] 1 All E.R. 30; [1962] 2 Q.B. 401.

Sub-s. (3): Corporation. See also, as to service on a company (within the meaning of the Companies Act 1948 (3 Halsbury's Statutes (2nd Edn.) 452)), s. 437 (1) of that Act (3 Halsbury's Statutes (2nd Edn.) 780).

Sub-s. (4): Principal office. This is the place where the business of the corporation or partnership is managed and controlled as a whole; see *Gayton v. Great Western Rail. Co.* (1858), E.B. & E. 837; *Palmer v. Caledonian Rail. Co.*, [1892] 1 Q.B. 823, C.A.; and *Clokey v. London and North Western Rail. Co.*, [1905] 2 I.R. 251.

Last known address. It appears that service at the last known address is valid even though the person in question is known to have left that address for good; see *Re Follick, Ex parte Trustee* (1907), 97 L.T. 645.

United Kingdom. *I.e.*, Great Britain and Northern Ireland; see the Royal and Parliamentary Titles Act 1927, s. 2 (2) (4 Halsbury's Statutes (2nd Edn.) 192).

Local authorities. For provisions as to sending or serving documents to or on local authorities, see the Local Government Act 1933, s. 286 (14 Halsbury's Statutes (2nd Edn.) 502); the London Government Act 1939, s. 182 (15 Halsbury's Statutes (2nd Edn.) 1157); and the City of London (Various Powers) Act 1954 (2 & 3 Eliz. 2 c. xxvii), s. 8. As from 1st April 1965, the London Government Act 1939 is repealed by the London Government Act 1963, s. 93 (1), Sch. 18, Part II; see *ibid.*, s. 8 (2), Sch. 4, paras. 38, 43.

Definitions. For "factory inspector", "mine and quarry inspector", "notice" and "owner", see s. 90 (1), *post*.

Interpretation Act 1889, s. 26. See 24 Halsbury's Statutes (2nd Edn.) 224.

82. Expenses and receipts.—(1) There shall be defrayed out of moneys provided by Parliament—

- (a) any expenses incurred by the Minister in carrying this Act into effect;
- (b) any increase attributable to this Act in the expenses of the Minister of Power which, by virtue of section 3 (3) of the Ministry of Fuel and Power Act 1945, are defrayed out of moneys so provided;
- (c) any increase attributable to this Act in the sums payable by way of General Grant, Rate Deficiency Grant or Exchequer Equalisation Grant, under the enactments relating to local government in England and Wales or in Scotland.

(2) Any sums received under this Act by the Minister shall be paid into the Exchequer.

NOTES

The Minister. *I.e.*, the Minister of Labour; see s. 90 (1), *post*.

General Grant. These grants are payable under the Local Government Act 1958, ss. 1 *et seq.* (114 Statutes Supp. 16 *et seq.*).

Rate Deficiency Grant. These grants are payable under the Local Government Act 1948 (14 Halsbury's Statutes (2nd Edn.) 655), as modified by the Local Government Act 1958 (114 Statutes Supp. 13 *et seq.*).

Exchequer Equalisation Grant. These grants are payable in Scotland.

Ministry of Fuel and Power Act 1945, s. 3 (3). See 32 Statutes Supp. 54.

83. Application to the Crown.—(1) The following provisions of this Act, namely sections 4 to 21, 23, 24, 27, 28, 29 (1) and (11), 33, 34, 35 (1), 36 to 38, 42 and 43 shall, in so far as they impose duties failure to comply with which might give rise to a liability in tort, be binding upon the Crown, and accordingly, for the purposes of those provisions and regulations under any of them, persons in the service of the Crown shall be taken to be employed if, apart from this subsection, they would not be so taken.

(2) Section 24 (7) of this Act shall, in its application to premises occupied by the Crown, have effect with the substitution, for the reference to the authority having power to enforce compliance with the foregoing provisions of that section, of a reference to a factory inspector or a person authorised under section 52 (3) of this Act.

(3) Section 29 (1) of this Act shall, in its application to premises owned or occupied by the Crown, have effect with the substitution, for the reference to the appropriate authority, of a reference to a factory inspector or a person authorised under section 52 (3) of this Act; and sections 29 (2) to (8) and (10), 30 (2) to (6), 32 and 35 (2) shall not apply to premises occupied by the Crown or to premises which, though not so occupied, form part of a building owned by the Crown, and shall, in their application to premises owned by the Crown but not occupied by it (not being premises in such a building as aforesaid) have effect as if—

- (a) for references to the appropriate authority (except references in sections 29 (2) and (8) and 30 (3), the second reference in section 30 (4) (b) and the second reference in section 30 (6)), there were substituted references to a factory inspector or a person authorised under section 52 (3) of this Act;
- (b) for references to that authority in the said sections 29 (2) and (8) and 30 (3), for the second reference thereto in section 30 (4) (b) and for the second reference thereto in section 30 (6), there were substituted references to the factory inspector in charge of the district in which the premises are situate.

(4) Section 46 of this Act shall, in the case of premises occupied by the Crown, have effect as if, for any reference to an authority having power to enforce any provision of this Act, there were substituted a reference to a factory inspector or a person authorised under section 52 (3) of this Act and as if the words in subsection (3) from “and are further satisfied” onwards, and subsections (5) to (14), had been omitted; and an exemption of, or of a room in, any such premises from a requirement imposed by a provision of this Act may be granted under the said section 46 despite the fact that the provision imposing the requirement is not in force in relation to the premises.

(5) Sections 52 and 53 of this Act shall not be construed as extending to the enforcement of provisions of this Act or regulations thereunder against the Crown or, in so far as they are enforceable, as regards premises owned or occupied by the Crown, against any other person, or as authorising the entry of premises occupied by the Crown, but any such provisions and regulations shall, in so far as they are enforceable, as regards premises owned or occupied by the Crown, against any other person, be enforceable by factory inspectors and persons authorised under section 52 (3) of this Act.

(6) The reference in subsection (1) of this section to a liability in tort shall be construed as not including such a liability towards a member of the armed forces of the Crown, and the reference in that subsection to persons in the service of the Crown shall be construed as not including any such member.

(7) In the application of this section to Scotland any reference to a liability in tort shall be construed as a reference to a liability in reparation arising from any wrongful or negligent act or omission.

NOTES

General effect of section. By sub-s. (1) the sections specified are made binding on the Crown so that, by virtue of this subsection and s. 2 (2) of the Crown Proceedings Act 1947 (47 Statutes Supp. 61), a civil action may be maintained against the Crown for breach of statutory duty. Sub-s. (2) makes a factory inspector or a person authorised under s. 52 (3), *ante*, the proper person to exempt premises occupied by the Crown from the requirements of s. 24 (1)–(6), *ante*. Sub-s. (3) makes a factory inspector or person authorised the proper person to grant a fire certificate, excludes certain Crown

premises from the operation of the sections specified and modifies those sections in their application to premises owned but not occupied by the Crown. Sub-s. (4) deals with the mode of exempting particular premises occupied by the Crown from the requirements of ss. 5 (2), 6, 9 and 10 (1), *ante*. Sub-s. (5) provides that any provisions of the Act or regulations which are enforceable against persons other than the Crown in respect of premises owned or occupied by the Crown are to be enforceable only by factory inspectors or persons authorised under s. 52 (3), *ante*. Sub-s. (6) excludes any tortious liability of the Crown to members of the armed forces.

Sub-s. (1): Liability in tort. As to liability in tort, see the third and fourth paragraphs of the note "General effect of section" to s. 4, *ante*.

Crown. Although it may be doubted whether, and if so how far, the doctrine that the Crown is one and indivisible throughout the Empire (see *Williams v. Howarth*, [1905] A.C. 551, P.C., and *Theodore v. Duncan*, [1919] A.C. 696, P.C., at p. 706), is applicable to the Commonwealth as now constituted in view of the development that culminated in the Royal Titles Act 1953 (78 Statutes Supp. 12), it seems clear from the references to India and other Commonwealth countries in which Her Majesty has no sovereignty in s. 84 (2), *infra* (cf. the note "India, etc." to that section) that the references to the Crown in this section cover references to the Crown in right of independent Commonwealth countries, such as Canada and Australia, in which Her Majesty has sovereignty.

Definitions. For "building", "employed", "factory inspector" and "owned", see s. 90 (1), *post*. Note as to "liability in tort" and "persons in the service of the Crown", sub-s. (6) of this section.

84. Exclusion of application to visiting forces.—(1) This Act shall not operate to create, towards a member of the naval, military or air forces of a country to which this section applies, a liability in tort against the Government of that country in respect of anything done or omitted by it or against another member of those forces in respect of anything done or omitted by him in the course of his duty.

(2) This section applies to India, Pakistan, Ghana, the Federation of Malaya, the Republic of Cyprus, Tanganyika and any country designated for the purposes of any provision of the Visiting Forces Act 1952 by Order in Council under section 1 (2) of that Act.

(3) In the application of this section to Scotland the reference to a liability in tort shall be construed as a reference to a liability in reparation arising from any wrongful or negligent act or omission.

NOTES

Liability in tort. See the note to s. 83, *supra*.

India, etc. It will be noticed that all the countries specifically mentioned in sub-s. (2) of this section are countries in which, although they are part of the Commonwealth, Her Majesty has no sovereignty and in relation to which the references to the Crown in s. 83, *ante*, are clearly inapplicable; cf. the India (Consequential Provision) Act 1949 (28 Halsbury's Statutes (2nd Edn.) 453); the Pakistan (Consequential Provision) Act 1956 (36 Halsbury's Statutes (2nd Edn.) 266); the Federation of Malaya Independence Act 1957, ss. 1, 2 (37 Halsbury's Statutes (2nd Edn.) 196, 197), in conjunction with the Federation of Malaya Independence Order in Council 1957 (S.I. 1957 No. 1533, Annex, art. 3); the Ghana (Consequential Provision) Act 1960 (40 Halsbury's Statutes (2nd Edn.) 245); the Cyprus Act 1960, ss. 1, 3, 6, (40 Halsbury's Statutes (2nd Edn.) 248, 249, 252), in conjunction with the Republic of Cyprus Order in Council 1960 (S.I. 1960 No. 1368); and the Tanganyika Republic Act 1962 (42 Halsbury's Statutes (2nd Edn.) 251); and see also *Gohoho v. Guinea Press, Ltd.*, [1962] 3 All E.R. 785; [1963] 1 Q.B. 948, C.A.

Visiting Forces Act 1952. See 32 Halsbury's Statutes (2nd Edn.) 984. For s. 112 of that Act, see 32 Halsbury's Statutes (2nd Edn.) 986. The Orders in force under that subsection at the time of going to press (14th October 1963) are the Visiting Forces (Designation) Order 1954 (S.I. 1954 No. 634; 19 Halsbury's Statutory Instruments, title Royal Forces) (designating Belgium, France, the Netherlands, Norway and the United States of America); the Visiting Forces (Designation) Order 1956 (S.I. 1956 No. 2041; 19 Halsbury's Statutory Instruments, title Royal Forces) (designating Luxembourg, Turkey, Greece, Denmark and Italy); and the Visiting Forces (Designation) Order 1961 (S.I. 1961 No. 1511) (designating the Federal Republic of Germany).

85. Exclusion of application to factories, to certain fish sale-rooms and to parts below ground of mines.—(1) With the exception of section 25 (2) of this Act, nothing in this Act shall apply to any premises which, for the purposes of the Factories Act 1961, form part of a factory.

(2) With the exception of section 75 (3) of this Act, nothing in this Act shall apply to any premises which, not being office premises, are used for the sale of fish by wholesale and constitute, or are comprised in, premises to which certain provisions of the Factories Act 1961 apply by virtue of section 125 (1) (docks, etc.) of that Act.

(3) Nothing in this Act shall apply to any part below ground of premises which, for the purposes of the Mines and Quarries Act 1954, are a mine.

NOTES

Not being office premises. Office premises to which the Act applies, which are comprised in premises to which the Factories Act 1961, s. 125 (1) (41 Halsbury's Statutes (2nd Edn.) 361), applies, are excluded from the scope of that subsection by s. 75 (1), *ante*; but see also s. 75 (2), *ante*.

Definitions. For "fish", see s. 90 (1), *post*; for "office premises", see s. 1 (2), (5), *ante*.

Factories Act 1961. See 41 Halsbury's Statutes (2nd Edn.) 239. For s. 125 (1) of that Act, see 41 Halsbury's Statutes (2nd Edn.) 361. The scope of that subsection is narrowed by s. 75 (3), *ante*.

Mines and Quarries Act 1954. For the meaning of "mine" in that Act, see s. 180 thereof (101 Statutes Supp. 194).

86. Exclusion of application to premises occupied for transitory purposes.—(1) It shall be a defence in any legal proceedings to recover damages and in any prosecution, in so far as the proceedings or prosecution are or is based on an allegation of a contravention, in relation to any premises, of a provision of this Act or regulations thereunder, to prove that at the time of the alleged contravention the premises were occupied for a purpose that was accomplished before the expiration of a period beginning with the day on which they were occupied for that purpose and of such of the following lengths as is applicable to the circumstances of the case, that is to say, six months if the premises consist of a movable structure, and six weeks if not.

(2) The foregoing subsection shall not apply to a prosecution for an offence consisting in a failure to comply with an obligation imposed under section 49 (1) of this Act to notify the appropriate authority that persons would be employed to work in any premises; but in any such prosecution it shall be a defence to prove that the persons in question were employed to work in the premises while they were occupied as mentioned in the foregoing subsection.

NOTES

General effect of section. By this section it is a good defence, both to a prosecution and to a civil action for breach of statutory duty, to prove that the contravention occurred while the premises were occupied for a purpose which was accomplished within a total period of six weeks or, if the premises are a moveable structure, six months.

Sub-s. (1): Defence. Cf. the note to s. 67, *ante*.

Contravention. This includes failure to comply with the provision of the Act or regulations in question; see s. 90 (1), *post*.

Beginning. Cf. the note to s. 5, *ante*.

Six weeks. The definition of "week" in s. 90 (1), *post*, applies only "unless the context otherwise requires"; here "six weeks" clearly means forty-two days.

*Provisions with respect to Northern Ireland, Isles of Scilly and
Inner and Middle Temples*

87. Powers of Parliament of Northern Ireland.—The limitations on the power of the Parliament of Northern Ireland to make laws imposed by paragraphs (1), (3) and (4) of section 4 (1) of the Government of Ireland Act 1920 (which specify, amongst the matters in respect of which that Parliament is not to have power to make laws, the Crown and the property of the Crown, naval, military and air forces and treaties and relations with foreign states or any part of Her Majesty's dominions) shall not be construed so as to prevent that Parliament from including, in a law made by it for purposes similar to those of this Act (or any of them), provisions corresponding to all or any of the provisions of sections 83 and 84 of this Act (other than provisions with respect to Scotland).

NOTE

Government of Ireland Act 1920, s. 4 (1). See 17 Halsbury's Statutes (2nd Edn.) 59.

88. Application to Isles of Scilly.—This Act shall apply to the Isles of Scilly as if those Isles were a county borough and the Council of those Isles were the council of the borough.

NOTE

General effect of section. The main effect of this section is to make the definition of "local authority" in s. 90 (1), *infra*, applicable to the Council of the Isles of Scilly and to make the Isles of Scilly that local authority's area within the meaning of s. 52 (1), *ante*.

89. Application to Inner and Middle Temples.—(1) For the purposes of the application of this Act to the Inner Temple and the Middle Temple the respective overseers thereof shall each be deemed to be a local authority.

(2) Each of the said overseers shall, for the purpose of the enforcement of this Act within his Inn, have the like powers as are by this Act conferred on a factory inspector, and section 53 (2) of this Act shall, with requisite modifications, apply accordingly.

(3) Section 52 (1) of this Act shall, in its application to each of the said overseers, have effect with the omission of the requirement to appoint inspectors; but each of the said overseers may appoint inspectors to assist him in the enforcement of this Act, and an inspector appointed under this subsection shall, for the purposes of section 53 of this Act, be treated as having been appointed under the said section 52 (1).

NOTES

Sub-s. (1): Deemed to be a local authority. The overseers are not within the definition of "local authority" in s. 90 (1), *infra*.

Sub-s. (2): Factory inspector. *I.e.*, an inspector appointed under the Factories Act 1961, s. 145 (41 Halsbury's Statutes (2nd Edn.) 382); see s. 90 (1), *infra*.

Interpretation

90. Interpretation.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

except in section 1 (4) of this Act, "building" includes structure;

"contravention" includes, in relation to a provision of this Act or of regulations thereunder, a failure to comply with the provision, and the expression "contravene" shall be construed accordingly;

"employed" means employed under a contract of service or apprenticeship (whether oral or in writing, express or implied);

- “ factory inspector ” means an inspector appointed under section 145 of the Factories Act 1961;
- “ fire certificate ” means a certificate issued under section 29 (3) of this Act;
- “ fish ” includes molluscs and crustaceans;
- “ fuel storage premises ” has the meaning assigned to it by section 1 (3) (a) (v) of this Act;
- “ local authority ” means, as respects England and Wales, the council of a county borough or a county district, the council of a metropolitan borough or the Common Council of the City of London and, as respects Scotland, the council of a county or the town council of a burgh;
- “ magistrates’ court ” has the same meaning as in the Magistrates’ Courts Act 1952;
- “ mine and quarry inspector ” means an inspector appointed under section 144 of the Mines and Quarries Act 1954;
- “ the Minister ” means the Minister of Labour;
- “ notice ” means a notice in writing;
- “ office premises ” has the meaning assigned to it by section 1 (2) of this Act;
- “ owner ”—
- (a) as respects England and Wales, means the person for the time being receiving the rackrent of the premises, building or part of a building in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rack rent if the premises, building or part were let at a rackrent, and
- (b) as respects Scotland, means the person for the time entitled to receive or who would, if the same were let, be entitled to receive, the rents of the premises, building or part of a building in connection with which the word is used and includes a trustee, factor, tutor or curator, and in the case of public or municipal property, applies to the persons to whom the management thereof is entrusted,
- and “ owned ” and “ ownership ” shall be construed accordingly;
- “ petty sessions area ” has the same meaning as in the Magistrates’ Courts Act 1952;
- “ place of public entertainment ” means—
- (a) any premises used mainly for public music and dancing in respect of which there is in force a licence granted under the Disorderly Houses Act 1751;
- (b) any premises in respect of which there is in force a licence granted under the Cinematograph Acts 1909 and 1952;
- (c) a place of public resort had or kept under the authority of letters patent from Her Majesty, Her heirs or successors, or predecessors, or a licence under the Theatres Act 1843, for the performance of stage plays as defined in that Act;
- “ police authority ” has the same meaning as in the Police Pensions Act 1921;
- “ railway premises ” has the meaning assigned to it by section 1 (4) of this Act;
- “ railway undertakers ” means any persons authorised by an enactment or a provision of an order or scheme made under or confirmed by an Act to construct, work or carry on a railway;

"shop premises" has the meaning assigned to it by section 1 (3) of this Act;

"week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

(2) References in this Act to machinery, plant, equipment or appliances shall be construed as including references to electrical fittings as defined for the purposes of the Electricity Act 1947.

(3) For the purposes of this Act—

(a) persons employed by railway undertakers to do work the general control of the doing of which is exercised at railway premises, or at office premises occupied by the undertakers for the purposes of the railway undertaking carried on by them and situate in the immediate vicinity of the permanent way, shall be deemed to be employed to work in the premises at which the general control of the doing of their work is exercised notwithstanding that their work is in fact done elsewhere;

(b) neither railway premises nor such office premises as aforesaid shall be taken to be premises in the case of which persons are employed to work therein by reason only of the fact that persons employed by the undertakers who occupy the premises resort to the premises for the purpose only of discharging duties whose discharge is incidental to the work that they are primarily employed to do.

(4) For the purposes of this Act, any such person as follows shall be taken to be employed, namely,—

(a) a person appointed under section 6 or 7 of the Registration Service Act 1953 who exercises and performs his powers and duties in premises provided and maintained by the council within whose area his district or sub-district is situate;

(b) a person elected under section 8 of the Registration of Births, Deaths and Marriages (Scotland) Act 1854 who exercises his functions in premises provided and maintained by a local authority;

(c) a member of a police force maintained by a police authority.

(5) The definition of a class of premises, rooms or persons for the purposes of any regulations or order under this Act may be framed by reference to any circumstances whatever.

(6) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment.

NOTES

As from 1st April 1965, in the definition of "local authority" in sub-s. (1) for the words "or a county district, the council of a metropolitan borough" there are substituted the words "a London borough or a county district" by the London Government Act 1963, s. 51 (1).

Structure. In *Hobday v. Nicol*, [1944] 1 All E.R. 302 (where the meaning of "structure" in a bye-law under the Land Drainage Act 1930 (13 Halsbury's Statutes (2nd Edn.) 551), was in issue), Humphreys, J. (with whom the other members of the Court agreed) said: "Structure, as I understand it, is anything which is constructed; and it involves the notion of something which is put together, consisting of a number of different things which are so put together or built, constructed as to make one whole which is then called a structure". See also, in particular, *Mills and Rockleys, Ltd. v. Leicester City Council*, [1946] 1 All E.R. 424; [1946] K.B. 315; *Cardiff Rating Authority and Cardiff Assessment Committee v. Guest Keen Baldwin's Iron and Steel Co., Ltd.*, [1949] 1 All E.R. 27; [1949] 1 K.B. 385, C.A.; and *B.P. Refinery (Kent), Ltd. v. Walker (Valuation Officer)*, [1957] 1 All E.R. 700, C.A.

Contravention. This definition is similar to the corresponding definition in the Factories Act 1961, s. 176 (1) (41 Halsbury's Statutes (2nd Edn.) 407).

Employed. This definition may be compared with the definition of "worker" in s. 24 (1) of the Agriculture (Safety, Health & Welfare Provisions) Act 1956 (113 Statutes Supp. 50).

The question whether a particular contract is one of service or for services is sometimes a difficult one; see *Simmons v. Heath Laundry Co.*, [1910] 1 K.B. 543, C.A.; *University of London Press, Ltd. v. University Tutorial Press, Ltd.*, [1916] 2 Ch. 601; *Drabble (Harold) Ltd. v. Hycolite Manufacturing Co.* (1928), 44 T.L.R. 264; *Stevenson (Stephenson) Jordan and Harrison, Ltd. v. Macdonald and Evans*, [1952] 1 T.L.R. 101, C.A. Whether a person is "employed" within the meaning of this definition at the material time is a question of fact in each case. He may, for instance, be performing services for his employer outside the contract of service; see *Byrne v. Statist Co.*, [1914] 1 K.B. 622; *Stevenson (Stephenson) Jordan and Harrison, Ltd. v. Macdonald and Evans*, *supra*; or he may be voluntarily working on his own account; see, e.g., *Napieralski v. Curtis (Contractors), Ltd.*, [1959] 2 All E.R. 426.

Fuel storage premises. See also s. 1 (5), *ante*.

Local authority. The existing county boroughs in England and Wales are the boroughs specified in the Local Government Act 1933, Schedule I, Part II (14 Halsbury's Statutes (2nd Edn.) 515); see s. 1 (2) of that Act (14 Halsbury's Statutes (2nd Edn.) 361). See also, as to reviews of local government areas, the Local Government Act 1958, ss. 17 *et seq.* (114 Statutes Supp. 39 *et seq.*); and see s. 34 of that Act (114 Statutes Supp. 62).

A "county district" is a non-county borough, urban district or rural district; see the Local Government Act 1933, s. 1 (1) (14 Halsbury's Statutes (2nd Edn.) 361). See, however, as to boroughs included in a rural district, the Local Government Act 1958, Schedule 7, para. 1 (114 Statutes Supp. 110).

The metropolitan boroughs are the boroughs named in the London Government Act 1939, Schedule 1 (15 Halsbury's Statutes (2nd Edn.) 1171); see s. 1 (1) (b) of that Act (15 Halsbury's Statutes (2nd Edn.) 1078); and see also the first note, *supra*.

The "Common Council of the City of London" means "the mayor, aldermen and commons of the city of London in common council assembled"; see the City of London (Various Powers) Act 1958, s. 5 (38 Halsbury's Statutes (2nd Edn.) 774).

See also as to the Isles of Scilly, s. 88, *ante*, and as to the Inner and Middle Temples, s. 89, *ante*.

Office premises. See also s. 1 (5), *ante*.

Owner. This definition closely follows the corresponding definition in the Factories Act 1961, s. 176 (1) (41 Halsbury's Statutes (2nd Edn.) 407). See, as to its construction, *Re Sawyer and Withall*, [1919] 2 Ch. 333; *Bottomley v. Harrison*, [1952] 1 All E.R. 368; *Rawlence v. Croydon Corpn.*, [1952] 2 All E.R. 535; [1952] 2 Q.B. 803, C.A., at p. 543 and p. 814, respectively, *per* Romer, L.J.; and *Solomons v. Gertzenstein (R.)*, *Ltd.*, [1954] 2 All E.R. 625; [1954] 2 Q.B. 243, C.A.

Railway premises; shop premises. See also s. 1 (5), *ante*.

Factories Act 1961, s. 145. See 41 Halsbury's Statutes (2nd Edn.) 382.

Magistrates' Courts Act 1952. For the meanings of "magistrates' court" and "petty sessions area" in that Act, see ss. 124 (1) and 126 (1) thereof (125 Statutes Supp. 178, 179), respectively.

Mines and Quarries Act 1954, s. 144. See 101 Statutes Supp. 157.

Disorderly Houses Act 1751. For the provisions of that Act as to the grant of licences, see s. 1 thereof (25 Halsbury's Statutes (2nd Edn.) 14).

Cinematograph Acts 1909 and 1952. *I.e.*, the Cinematograph Act 1909 (25 Halsbury's Statutes (2nd Edn.) 39), and the Cinematograph Act 1952 (32 Halsbury's Statutes (2nd Edn.) 1022); see s. 10 (1) of the latter Act (32 Halsbury's Statutes (2nd Edn.) 1027). For the provisions of those Acts as to the grant of licences, see s. 2 of the Act of 1909 (25 Halsbury's Statutes (2nd Edn.) 40).

Theatres Act 1843. For the provisions of that Act as to the grant of licences, see ss. 2 *et seq.* thereof (25 Halsbury's Statutes (2nd Edn.) 19 *et seq.*); for the definition of "stage play" in that Act, see s. 23 thereof (25 Halsbury's Statutes (2nd Edn.) 28).

Police Pensions Act 1921. For the meaning of "police authority" in that Act, see s. 30 thereof and Schedule 3, Part I, thereto (18 Halsbury's Statutes (2nd Edn.) 131, 132).

Electricity Act 1947. For the definition of "electrical fittings" in that Act, see s. 67 thereof (50 Statutes Supp. 151).

Registration Service Act 1953, ss. 6, 7. See 33 Halsbury's Statutes (2nd Edn.) 639, 640.

Short Title, Commencement, Extent and Repeal

91. Short title, commencement, extent and repeal.—(1) This Act may be cited as the Offices, Shops and Railway Premises Act 1963.

(2) This Act shall come into operation on such day as the Minister may by order appoint, and different days may be appointed for the coming into

operation of different provisions, of a particular provision in relation to premises of different classes or of a particular provision for different purposes.

(3) This Act shall not extend to Northern Ireland except in so far as it extends the powers of the Parliament of Northern Ireland.

(4) The enactments specified in columns 1 and 2 of Schedule 2 to this Act are hereby repealed to the extent respectively specified in relation thereto in column 3 of that Schedule.

NOTES

The Minister. *I.e.*, the Minister of Labour; see s. 90 (1), *ante*.

Orders under this section. No order had been made under this section up to 14th October 1963.

For provisions as to orders, see s. 80, *ante*.

SCHEDULES

SCHEDULE 1

Section 80

PROCEDURE FOR MAKING SPECIAL REGULATIONS

1. Before the Minister makes any special regulations he shall publish in the London and Edinburgh Gazettes, and in such other manner as he may think best adapted for informing persons affected, notice of the proposal to make the regulations, and of the place where copies of the draft regulations may be obtained, and of the time (which shall be not less than twenty-one days) within which any objection made with respect to the draft regulations by or on behalf of persons affected must be sent to him.

2. Every objection must be in writing and state—

(a) the specific grounds of objection; and

(b) the omissions, additions, or modifications asked for.

3. The Minister shall consider any objection made by or on behalf of any persons appearing to him to be affected which is sent to him within the required time, and he may, if he thinks fit, amend the draft regulations, and, after doing so, he shall, unless an inquiry has been held under this Schedule, cause the amended draft to be dealt with in like manner as an original draft.

4. If after the publication of the notice with respect to any draft regulations (whether an original or amended draft) any general objection (as defined in paragraph 6 of this Schedule) is made within the required time with respect to the draft and not withdrawn, then, unless a previous inquiry under this Schedule has been held with respect to the draft or some previous draft of the regulations, he shall before making the regulations direct an inquiry to be held in the manner hereinafter provided and he may, if he thinks fit, also direct such an inquiry to be held in regard to any objection, notwithstanding that no such general objection has been made or that such a previous inquiry has been held as aforesaid.

5. Where any such inquiry is to be held as to any draft regulations, the following provisions shall have effect with respect to the inquiry—

(a) the Minister shall appoint a competent person or competent persons to hold the inquiry, and to report to him thereon;

(b) the inquiry shall be held in public, and the chief factory inspector, a deputy chief factory inspector, any objector and any other person who, in the opinion of the person holding the inquiry or, if there is more than one such person, of the person presiding over the inquiry, is affected by the draft regulations, may appear at the inquiry either in person or by counsel, solicitor or agent;

(c) the witnesses may, if the person holding or presiding over the inquiry thinks fit, be examined on oath;

(d) subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with regulations made by the Minister and the regulations may make provision as to the costs of the inquiry and other proceedings, including the remuneration of the person or persons holding the inquiry.

6. In this Schedule the expression "general objection" means, as respects any draft regulations, an objection made—

- (a) by or on behalf of the majority of the occupiers of the premises affected by the draft regulations or by or on behalf of the occupier or occupiers employing a majority of the persons employed to work in those premises, or by any person who satisfies the Minister that he or an association on behalf of which he acts represents a majority of the persons so employed; or
- (b) by or on behalf of the majority of the occupiers of any class of premises affected as respects which it appears to the Minister that, by reason of special conditions existing in connection therewith, there is reason to believe that any of the requirements of the draft regulations may be unnecessary or inappropriate in the case of premises of that class, or by or on behalf of the occupier or occupiers employing a majority of the persons employed to work in any such class of premises as aforesaid or by any person who satisfies the Minister that he or an association on behalf of which he acts represents a majority of the persons so employed.

NOTES

This Schedule is modelled on the Factories Act 1961, Schedule 4 (41 Halsbury's Statutes (2nd Edn.) 417).

Para. 1: Not less than twenty-one days. Cf. the second paragraph of the note "Within twelve months" to s. 20, *ante*.

Para. 3: Appearing. See the note "Appears" to s. 20, *ante*.

Para. 5: Chief factory inspector; deputy chief factory inspector. Provision for the appointment of factory inspectors in general and a chief factory inspector in particular is made by the Factories Act 1961, s. 145 (41 Halsbury's Statutes (2nd Edn.) 382). Cf. also the definition of "chief factory inspector" in the Factories Act 1961, s. 176 (41 Halsbury's Statutes (2nd Edn.) 407).

Para. 6: Appears. See the note to s. 20, *ante*.

Definitions. For "employed", see s. 90 (1), (4), *ante*; for "the Minister", see s. 90 (1), *ante*. See also, as to "work in . . . premises", s. 90 (3), *ante*.

Regulations under this Schedule. No regulations had been made under this Schedule up to 14th October 1963.

For provisions as to regulations, see s. 80, *ante*.

Section 91

SCHEDULE 2

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
26 Geo. 5 & 1 Edw. 8 c. 49	The Public Health Act 1936	In section 44 (3), the words "to a shop to which the Shops Act, 1934, applies, or". In section 45 (4), the words "to a shop to which the Shops Act, 1934, applies, or". Section 46 (4). Section 92 (3). Sections 37 to 39.
14 Geo. 6 c. 28	The Shops Act 1950	In section 45, the words "or section thirty-seven". In section 69 (1) the words "and section thirty-seven". In section 72, subsections (2) and (3), and in subsection (4), paragraph (b). In section 74 (1), the definitions of "owner", "Public Health Acts" and "sanitary authority". In section 75, the last paragraph. Section 18.
6 & 7 Eliz. 2 c. xxi	The London County Council (General Powers) Act 1958	
8 & 9 Eliz. 2 c. 47	The Offices Act 1960	The whole Act.

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